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COMMITTEE REPORT

HOUSE

FURTHER:

(7)

4/14/83

Date:

5/17/83

Mr. Speaker:

HEALTH, EDUCATION AND
SOCIAL SERVICES

The Committee on

has had

HB 357

"An Act relating to the regulation of religious schools."

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
 Zero Fiscal Note Attached
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

M. W. Miller
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

CHAIRMAN

4/15 - Reg fiscal note DOE
" - " " " H&SS

4/19 Spoke w/ Keith Levy re: Constitutionality

- Removing language re: "operation by religious groups"
would stand up constitutionally - effects would be
all non-profit private schools would not be regulated by DOE.

DOE -

- not support a bill that would strip DOE of
health & safety standards

DOE supports:

- exemptions apply only to curricula - not immigration
an example

- What type of tax exemptions are necessary to be non-profit -

4/10 Willenbrock Papers from DOE requested again. from Van Slyke

called:

7/10 310 K State St. / And Home / Marie Lozano /

501c3 - Code - Religious schools, charitable cont.

Religious/Educational

Church: automatically tax exempt

Pub #557

Court won't protect school from tax action

Washington — The Supreme Court today refused to suspend a ruling that could deny a small Baptist school in Mississippi its federal tax exemption because it has failed to recruit blacks. The court turned down an emergency request by Clarksdale Baptist Church, which is seeking to prevent the Internal Revenue Service from proceeding to revoke its tax exempt status. Critics say the Clarksdale Baptist school was founded in 1963 to provide a place for whites trying to avoid attending public schools under orders to integrate. Other new private schools in Mississippi were founded around the same time. The Clarksdale Baptist Church denies that it has ever practiced racial discrimination, and says it would accept black students or teachers if any ever applied.

bench Times 10/3/83

11 states lose Indian rights case

Washington — The Supreme Court today left intact a ruling that 11 states say effectively prevents them from suing Indian leaders in federal court to stop alleged tribal violations of federal law. The court, without comment, turned down an appeal by California, which is seeking a share of the power to regulate fishing and hunting by non-Indians on Indian reservations. Ten other states joined California in pressing for Supreme Court review of the case. They said federal court rulings against California have placed "Indian tribes above the law, in that no remedy is available to restrain them from committing unlawful acts." The Supreme Court has ruled that Indian tribes generally enjoy the same "sovereign immunity" as state governments, meaning that they are shielded from most lawsuits challenging official tribal policies.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

July 28, 1983

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: SCS CS HB No. 357 (Rls)
am S -- Relating to the
Regulation of ~~Private~~...
SCHOOLS.

Dear Mr. Speaker:

I have today vetoed Senate Committee Substitute for
Committee Substitute for House Bill No. 357 (Rls) am S.

I have taken this action despite substantial pressure from
several organized religious groups, on the grounds that
enacting this legislation serves no discernible public
purpose, and will only benefit select, private interests.

The State of Alaska presently regulates private religious
schools only to a limited degree, primarily in the areas
of health and safety. I have no plans to do more.

Given that early childhood development programs, daycare
and preschool, have become a rapidly growing industry in
the state, I am reluctant to create an exemption for any
group of service providers, without greater justification
for the exemption. Further, the distinction between
religious and non-religious private educational programs
created by this bill moves us perilously close to
constitutional challenge for violation of equal protection
provisions of both the state and federal constitutions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bill Sheffield".

Bill Sheffield
Governor

HOUSE ROLL CALL

19

SUBJECT:

	Yea	Nay	Absent
23			
ABOOD	✓		
ADAMS <i>not in town over-districted</i>			
✓ BARNES	✓		
✓ BETTISWORTH	✓		
✓ BUSSELL	✓		
CATO <i>out of state</i>	✓		
CLOCKSIN			
✓ COWDERY	✓		
DAVIS			
DUNCAN <i>sc</i>	✓		
FLOOD	✓		
✓ FRITZ	✓		
FULLER			
✓ FURNACE	✓		
GOLL		(✓)	<i>uncertain</i>
GRUSSENDORF <i>??</i>			
✓ HERRMANN	✓		
HURLBERT	✓		
KOPONEN			
LACHER <i>out of state</i>			
LARSON <i>out of state</i>			<i>uncertain</i>
✓ LINDAUER	✓		
LISKA	✓		
MALONE			
MARTIN	✓		
MCBRIDE			
MILLER (D) <i>sc</i>	✓		
✓ MILLER (R)	✓		
PESTINGER	✓		
PHILLIPS			
RINGSTAD	✓		
SHULTZ <i>o</i>			
SZYMANSKI		✓	
✓ FISCHER	✓		
UEHLING	✓		
VASKA			
✓ WARD	✓		
WENDTE			
ZHAROFF <i>needs resp. answer</i>			
# HAYES	✓		

64 Home Numbers

7/11/83

REPRESENTATIVES

<u>Representative</u>	<u>Legislative Office Location</u>	<u>Legis. Phone</u>	<u>Staff</u>
Mitch Abood House State Affairs	500 L St., Suite 310-D	274-2843 274-5941	Carol Horos ^{Home #} 274-8483 Elaine Bales 333-5632
Al Adams House Finance	1024 W. 6th, Suite 204-A/B Room 507, Capitol	274-0615/16 465-3706	Louann Cutler Darla Schnell Marla Berg Elmer Lindstrom
Ramona Barnes House Majority Leader	1024 W. 6th, Suite 201-A/B	276-3176	Jeanne Lovell 293-5773 Jim Wood
Bob Bettisworth (Budget & Audit)	211 Cushman Fairbanks 99701 <i>Anch-Dou Ken = 276-7862</i>	452-3421 452-3471	Mike Dalton (B&A) Steve Frank (B&A) Marilyn Wilson (B&A) Ralph Bennett (Fin) Leta Kaye (Fin)
<i>Bette Cato</i>	<i>835-4568</i>		
Charlie Bussell House Judiciary	1024 W. 6th, Suite 200	274-1441	Joe Brewer Catherine Zalewski
Don Clocksin	1024 W. 6th, Room 204-G	274-4031	
John Cowdery Oil & Gas Committee	500 L, Suite 310-D	278-1521	Shirley Dreas <i>243-7876</i>
Walt Furnace House Labor & Commerce	500 L, Suite 310-D	277-2459	Steve Levi <i>337-2021</i> Diana Smith
Ben Grussendorf	P.O. Box 928, Sitka	747-8459 (h) 747-6276 (Sitka LIO)	
Joe Hayes Speaker of the House	1024 W. 6th, Room 201-D/E	272-3471 <i>OR-278-8222</i>	Jeff Day Neil Phelps-Munson
Adelheid Herrmann Spec. Committee on Fisheries	1024 W. 6th, Room 201-G	<i>276-8994</i>	
Vern Hurlbert	1024 W. 6th, Room 204-B	277-2141	Kay Wallis June Baker
Barbara Lacher	P.O. Box 478, Palmer 99645	376-5865 (h) 376-3704 (msg - LIO)	
Ron Larson	P.O. Box 53, Palmer 99645	745-3826 376-3704 (Mat.-Su LIO)	
John Lindauer	500 L St., Suite 310-A	<i>562-4684</i>	

Szymanski

688-2526 John

John Liska Admin. Regulation Review	Eagle River 99577 (Mary's home)	694-5080	Mary Whitman
Sgt. Pestinger	500 L St., Suite 310-F	274-7681/82	CINDY ERVIN 243-1222 Terry Otness Ed Essa 344-0950
John Ringstad	211 Cushman St.; Fairbanks 99701	452-3252 452-3206	Dave Stancliff
Mae Tischer House HESS Co-Ch	500 L St., Suite 310-G	277-2486	Bill Lovell 243-5773 TRUDIE ALFORD (274-23 HOME
Rick Uehling Spec. Committee on Loans	1024 W. 6th, Room 204-F	274-2441	
Jerry Ward	500 L St., Suite 310-C	277-2479	Linda Cortez 276-0378 Lydia Jones 278-2296
House Minority Democrats	1024 W. 6th, Room 204-G	274-40312	Pat Corbett

CSHB 357(Rls)

CSHB 357(RULES) RECON

Yeas: 28 ✓ Abood, Adams, Barnes, Bussert,
 ✓ Cato, Cowdery, Duncan, Flood, Fritz,
 ✓ Fuller, Furnace, Goll, Hayes,
 Herrmann, Hurlbert, Larson, Lindauer,
 ✓ Liska, Martin, Miller, M.M.,
 Miller, M.W., Opeatinger, Ringstad ✓
 ✓ Szymanski, Fischer, Uehling, Ward,
 Zharoff

Nays: 9 Clocksin, Davis, Koponen, Lacher,
 Malone, McBride, Phillips, Shultz,
 Wendte

Excused: 3 Bettisworth, Grussendorf, Vaska

Absent: 0

And so, CSHB 357(Rls) passed the House on reconsideration of the vote.

Representative Tischer moved and asked unanimous consent that the following letter of intent be adopted:

"May 24, 1983

offered by
 Representative Mae Tischer

LETTER OF INTENT

HB 357 "An Act relating to the regulation of religious schools."

The House of Representatives recognizes that operating a church school is an integral part of the free expression of religion and that schools operated by religious bodies are quite different from other private schools. Therefore, the purpose of HB 357 is to prevent possible church-state constitutional conflicts by protecting the fundamental rights of religious freedom of parents, children, and church schools in Alaska and, at the same time, to balance the state's interest in assuring that each child receives a good education. The House specifically intends to exempt pre-elementary and nursery programs operated by religious organizations from the general supervision of the Departments of Education and of Health and Social Services.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR



DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

GOLDBELT PLACE
901 WEST 10th STREET
POUCH F
JUNEAU, ALASKA 99811

October 19, 1983

The Honorable Mae Tischer, Chair
Health, Education and Social
Services Committee
500 "L" Street, Suite 310-G
Anchorage, AK 99501

Dear Mae:

Thank you for your various communications on matters related to preschool regulations. In our conversations nearly two months ago, I recall saying that the Department of Education (DOE) would not propose regulations for action by the State Board but that we would proceed with the process and wait for action to clarify the laws and the intent of the Legislature during the forthcoming session. We proceeded on that basis and requested further public comment. We have certainly had that.

The important responsibility for the Legislature in the matter is a clear determination of a public policy for preschool programs, public and private. I know you understand that the Department of Education and the State Board have no interest in developing regulations unless there is a legal basis for such regulations contained in the statutes.

Ernestine Griffin, President of the State Board, and the Department are ready to work with the Legislature at your forthcoming session to define the State responsibility for public and private preschool programs. If your committee has direction or data for us to prepare, we are ready to go to work. There is important work to be done to resolve these matters.

I regret that I was unable to reach you even from Chena Hot Springs by radio telephone. Your staff members were most helpful in our efforts to communicate.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Harold'.

Harold Raynolds, Jr.
Commissioner

cc: Ernestine Griffin, State Board President
Members of the State Board
Richard Luther
Annie Calkins

(8) in cooperation with the Department of Health and Social Services, exercise general supervision over public and private pre-elementary schools and over the educational component of nurseries as defined in AS 47.35.080(4); pre-elementary schools in this paragraph means schools for children ages three through five years when the schools' primary function is educational;

(9) provide accredited elementary and secondary correspondence study programs available to any Alaskan through a centralized office of correspondence study;

(10) accredit private elementary and secondary schools which request accreditation and which meet accreditation standards prescribed by regulation by the department;

(11) review plans for construction of new public elementary and secondary schools and for additions to and major rehabilitation of existing public elementary and secondary schools and, in accordance with regulations adopted by the department, determine and approve the extent of eligibility for state aid of a school construction project begun after July 1, 1978; for the purposes of this paragraph, "plans" include educational specifications, schematic designs, and final contract documents;

(12) provide educational opportunities in the areas of vocational education and training, basic education, and fire-service training to individuals over 16 years of age who are no longer attending school;

(13) administer the grants awarded under AS 14.11.020. (§ 1 ch 98 SLA 1966; am § 2 ch 69 SLA 1971; am § 6 ch 104 SLA 1971; am § 1 ch 190 SLA 1975; am § 6 ch 50 SLA 1977; am §§ 1-3 ch 126 SLA 1978; am § 10 ch 147 SLA 1978; am § 1 ch 86 SLA 1979; am § 24 ch 59 SLA 1982; §§ 1, 2 ch 92 SLA 1982)

Revisor's notes. — A reference to AS 14.11.020 was substituted for a reference to AS 14.07.190 in paragraph (13) by the revisor of statutes under AS 01.05.031 to conform to the renumbering of that section.

Effect of amendments. — The first 1978 amendment deleted "private, and denominational" preceding "schools" near the beginning of paragraph (6), inserted "and private" preceding "schools" in paragraph (7), added the language beginning "the standards for private schools" to the end of paragraph (7), and added paragraph (10).

The second 1978 amendment added paragraph (11).

The 1979 amendment added paragraph (12).

The first 1982 amendment substituted "of" for "and" preceding "new public elementary" in paragraph (11).

The second 1982 amendment substituted "'plans' include" for "a plan" includes" in paragraph (11), inserted "and approve" and "the" preceding "purposes of this paragraph" in the same paragraph, and added paragraph (13).

Stated in Anchorage S

Collateral require const. buildings. 1 A Power of sc physicians, nu 12 ALR 922.

Extent of leg to attendance 477; 63 ALR 8 Kindergarte

Sec. 14.0

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- (12) exerci 1966; am § 1 ch 161 SLA 1

Title 14 Education

Adoption of Agenda ACTION

Approval of Minutes ACTION

Board Comments and Concerns

Public Comments

REPORTS

Commissioner's Report
Finance Report
Subcommittee Reports
Attorney General's Report

84-9 REGULATIONS

4 AAC. 60.009-199 Proposed Adoption of Early
Childhood Program Regulations ACTION

4 AAC. 12.055 Proposed Adoption of Early
Childhood Teacher Certification Regulations ACTION

4 AAC. 12.010(b) and (c) Procedure Governing
Application for Teacher Certification PROMULGATION

4 AAC. 12.010(g) Proposal for Revision of Fee
Structure for Teacher Certification PROMULGATION

4 AAC. 12.010(h) Revision of Requirements
Governing the Issuance of Certification
Endorsements PROMULGATION

4 AAC. 12.020(d), 4 AAC. 12.030(d), 4 AAC.040(c)
Proposal for Elimination of Nonacademic Credit
From the Teacher Certification Renewal Process PROMULGATION

4 AAC. 12.030(a)(2) Proposal for Repeal of
Special Qualifications For Out of State
Applicants for Administrative Certification PROMULGATION

4 AAC. 12.045 Proposal for Amendment of
Provisions for Professional Certificate
Requirements PROMULGATION

4 AAC. 12.060(b)(2) Proposal for Repeal of
Transcript Review by Department Certification
Personnel PROMULGATION

	4 AAC. 12.080(1)-(3) Proposal for Repeal of Nonacademic Credit Approval Process	PROMULGATION
	4 AAC. 12.080(d) Proposed Elimination of the Grace Period for Certification Renewal	PROMULGATION
12:30PM	Recess for Lunch	
1:30PM	Reconvene	
84-10	Board Priorities for FY 85 Budget	ACTION
84-11	Mt. Edgecumbe Project	ACTION
84-12	Teacher Education On Site Review Team Report University of Alaska/Anchorage - Secondary Programs	ACTION
84-13	Consideration of Plan for Drafting of Official Bylaws for State Board of Education	ACTION
	STATE BOARD FOR VOCATIONAL REHABILITATION	
84-14	Appointments to Vocational Rehabilitation Advisory Board	ACTION
	STATE BOARD FOR VOCATIONAL EDUCATION	
84-15	Appointment to Vocational Education Planning Council	ACTION
84-16	Board Review of Proposed Timeline for the Department of Education Career and Vocational Education Plan (K-12, Adult, Postsecondary)	DISCUSSION
84-17	Proposed Criteria for Vocational-Technical Centers	DISCUSSION
84-18	Vocational Education Advisory Council Report	INFORMATION
5:30PM	ADJOURN	

Register , 1983

EDUCATION

4 AAC 60

TITLE 4. EDUCATION.
CHAPTER 60. PRE-ELEMENTARY (EARLY CHILDHOOD) SCHOOL

Register , 1983

EDUCATION

4 AAC 60

SECTION

4	AAC	60.009	Applicability
4	AAC	60.010	(Repealed)
4	AAC	60.019	Certificate Required
4	AAC	60.020	(Amended)
4	AAC	60.030	(Amended)
4	AAC	60.031	Implementation
4	AAC	60.032	Provisions of Certificate
4	AAC	60.039	Provisional Certificate
4	AAC	60.040	(Repealed)
4	AAC	60.049	Special Changes Affecting Certification
4	AAC	60.050	(Amended)
4	AAC	60.051	Certification Renewal
4	AAC	60.059	Waiver of Requirements
4	AAC	60.060	(Repealed)
4	AAC	60.061	Voluntary Certification
4	AAC	60.065	Inspection
4	AAC	60.069	Organization and Administration
4	AAC	60.070	(Repealed)
4	AAC	60.079	Ensuring Care In Emergency
4	AAC	60.080	(Repealed)
4	AAC	60.089	Administrator Qualifications
4	AAC	60.090	(Repealed)
4	AAC	60.099	Staff Qualifications
4	AAC	60.100	(Repealed)
4	AAC	60.110	(Repealed)
4	AAC	60.115	(Amended)
4	AAC	60.119	Environment Requirements
4	AAC	60.120	(Repealed)
4	AAC	60.129	Fire Safety
4	AAC	60.130	(Repealed)
4	AAC	60.139	Sanitation and Environmental Protection
4	AAC	60.140	(Repealed)
4	AAC	60.149	Health Program
4	AAC	60.150	(Repealed)
4	AAC	60.159	Immunizations Required
4	AAC	60.160	(Repealed)
4	AAC	60.169	Nutrition
4	AAC	60.170	(Amended)
4	AAC	60.175	(Amended)
4	AAC	60.180	(Repealed)
4	AAC	60.191	Exceptional Children
4	AAC	60.199	Definitions

ARTICLE 1.

Section

4 AAC 60.009. APPLICABILITY. The provisions of 4 AAC 60.009 - 4 AAC 60.101, apply to pre-elementary schools as defined in 4 AAC 60.199. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.010. REQUIREMENTS. Repealed

Authority: AS 14.07.020

4 AAC 60.019. CERTIFICATE REQUIRED. (a) A person who does not have a certificate issued under 4 AAC 60.009 - 4 AAC 60.191 may not:

- (1) operate a pre-elementary school; or
- (2) advertise or represent that the person offers pre-elementary educational services to children. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.020 is amended to read: EXEMPTIONS. (a) The following programs are exempt from the requirements of 4 AAC 60.009 - 4 AAC 60.199.

- (1) schools operated by the federal government
- (2) programs licensed as day care facilities under 7 AAC 50.120 - 7 AAC 50.275 (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.030. is amended to read APPLICATION FOR A CERTIFICATE OF APPROVAL. (a) An applicant must apply for a certificate on a form provided by the department, and submit all required attachments with the application.

(b) Within 60 days after receipt of a completed application and all required attachments, a department representative will

(1) review the application, confer with the applicant if necessary, and schedule an inspection of the pre-elementary school; and

(2) if the department considers it necessary, request appropriate authorities to verify compliance with applicable fire safety regulations, environmental health regulations, building codes, zoning ordinances, and other state and municipal laws.

(c) If the results of the application review and inspection indicate that the pre-elementary school meets the requirements of 4 AAC 60.009 - 4 AAC 60.199, the department will issue a certificate to the applicant.

(d) If the department finds that the program does not comply with the requirements of 4 AAC 60.009 - 4 AAC 60.199, the department will deny a certificate, and provide the applicant with reasons in writing for the denial, and notify the Department of Health and Social Services, Division of Family Services of the status of the program. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.031. IMPLEMENTATION. (a) All currently certified pre-elementary schools in existence in Alaska upon the effective date of 4 AAC 60.009 - 4 AAC 60.199 must complete an application for a certificate and submit it to the department no later than 12 months after the effective date of 4 AAC 60.009 - 4 AAC 60.199. (Eff. / / , Reg.) *Montessori!*

(b) All currently operating, non-certified pre-elementary schools must complete an application, with required attachments, and submit it to the department within 120 days of the effective date of 4 AAC 60.009 - 4 AAC 60.199.

Authority: AS 14.07.020

4 AAC 60.032. PROVISIONS OF CERTIFICATE. (a) A certificate issued in accordance with 4 AAC 60.009 - 4 AAC 60.191 will state

(1) the period for which it is in effect;

(2) the name of the person, board, or school district certified to operate the pre-elementary school;

(3) the address of the person, board, or school district certified to operate the pre-elementary school;

(4) the maximum number of children who attend the program at any one time;

(5) ages of children who may enroll in the program;

(b) The certificate must be displayed in the pre-elementary school in plain view of the public. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.039. PROVISIONAL CERTIFICATE. (a) The department will, in its discretion, issue a provisional certificate to a pre-elementary school whose completed application of certification has been approved by the department and whose final certification is dependent upon the on-site review of the program. The pre-elementary school may operate with a provisional certificate while department representative completes the on-site review and a certificate is granted or denied. A provisional certificate may not be issued if the department has reasonable cause to believe there is a standard not met which may mean substantial threat to life or safety of the children enrolled. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.040. DENIAL OF APPROVAL; HEARING. Repealed.

4 AAC 60.049. SPECIAL CHANGES AFFECTING CERTIFICATION. (a) The certificate holder shall report an anticipated change in any of the following to the department as early as possible but not more than 90 days before the change occurs.

(1) a change in the administrator of the program;

(2) a change in the name of the person certified to operate the facility;

(3) a change of the location of the facility;

(4) a change in the name of the pre-elementary school;

(5) a substantial change in the program offered; or

7

(6) a substantial change in the building housing the pre-elementary school.

(b) A certificate may not be transferred to a different location or owner.

Authority: AS 14.07.020

4 AAC 60.050. is amended to read DURATION OF APPROVAL. (a) A certificate issued under 4 AAC 60.009 - 4 AAC 60.191 is valid for a period of two years from the date of issuance.

(b) A certificate may be modified, revoked, or suspended for failure to comply with the requirements of 4 AAC 60.009 4 AAC 60.199 or other statutes and regulations covering the health, safety and welfare of students and staff.

(c) If the department finds that the holder of a certificate does not meet the requirements of 4 AAC 60.09 - 4 AAC 60.119, the department may revoke, modify or suspend the certificate subject to 4 AAC 60.039. The holder of the certificate may request a hearing before the division director or the division director's designee within 15 days after receipt of the accusation or statement of issues in accordance with AS 44.62.360 and AS 44.62.370.

(d) Following the hearing, the hearing officer shall prepare the findings and recommend appropriate action to the commissioner. The commissioner shall review the hearing officer's recommendations and determine what action shall be taken. The decision of the commissioner is subject to review in the manner provided by AS 44.62.560. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.051. CERTIFICATE RENEWAL. (a) Upon request, the department will provide the certificate holder with a renewal application form at least 60 days before the expiration of the certificate holder's existing certificate.

(b) The certificate holder shall submit the completed renewal application to the department at least 30 days before the expiration of the existing certificate; however, the department will, in its discretion, waive the requirements of this subsection if it determines there is good cause for the waiver.

(c) The department will, in its discretion, conduct a review and take appropriate action within ten days before expiration of the existing certificate.

(d) If the department cannot complete the review within the period set out in (c) of this section, it will issue the applicant a provisional certificate effective until completion of the department's review. (Eff. / / , Reg.)

(e) The department will not renew a certificate if there is a revocation action pending.

Authority: AS 14.07.020

4 AAC 60.059. WAIVER OF REQUIREMENTS. (a) An applicant for a waiver must apply in writing to the department. The application must include

(1) a statement of the requirement for which the waiver is requested;

(2) an explanation of the reasons why the requirement cannot be satisfied; and

(3) a description of the alternative method proposed to satisfy the purpose of the requirement for which the waiver is requested.

(b) The department will, in its discretion, waive a requirement of 4 AAC 60.009 - 4 AAC 60.199 if an alternative method of satisfying the purpose of the requirement is established.

(c) The department will not grant a waiver, until the appropriate municipal or state authority have reviewed a request for a waiver involving fire safety, environmental health, or other municipal or state requirements within their jurisdiction.

(d) A waiver granted under this section is effective for the time specified on the certificate. The commissioner will review a waiver upon the termination of the waiver and will, in his discretion, renew the waiver.

(e) The department will answer a request for a waiver in writing within 30 days. (Eff. / / , Reg.)

Authority: AS 14.07.020

9

4 AAC 60.060. DISPLAY OF CERTIFICATE. Repealed.

4 AAC 60.061 VOLUNTARY CERTIFICATE. (a) A pre-elementary school for which a certificate is not required under 4 AAC 60.009 - 4 AAC 60.199 may apply for a certificate. The department will, in its discretions, issue a certificate if it determines that the pre-elementary school satisfies the requirements of 4 AAC 60.009 - 4 AAC 60.199. (Eff. / / , Reg.)

(b) A licensed day care facility applying for certification as a pre-elementary school may submit in writing to the department a copy of its current day care license, and the following:

- 1) Philosophy of education;
- 2) Program educational goals and objectives;
- 3) Samples of daily schedules or lesson plans;
- 4) Provisions for parental involvement in program;
- 5) Child progress records.

The department will review the information and if appropriate, issue a voluntary certificate to the applicant.

Authority: AS 14.07.020

4 AAC 60.065 INSPECTION. (a) The department shall schedule and conduct on-site inspections to determine compliance with regulations in 4 AAC 60.009 - 4 AAC 60.199.

(b) If a program which the department suspects is a pre-elementary school has not applied for a certificate and refuses to permit an inspection, the department may seek an administrative search warrant. (Eff. / / , Reg.)

(c) An applicant or certificate holder shall permit certification representatives to inspect the pre-elementary school at any time during the facility's hours of operation. In carrying out these visits, certification representatives will call upon governmental agencies for appropriate assistance. Applicants or certificate holders shall cooperate in these visits by providing access to their facilities, records, children and staff. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.069. ORGANIZATION AND ADMINISTRATION. (a)

The name, address and telephone number of the person or organization with the legal responsibility and the administrative authority for operating the pre-elementary school must be provided to the department and, if the facility is operated by an association, corporation or other entity, the name, address, and telephone number of each member of its board or governing body must also be provided to the department

(b) The individual or governing body with the legal responsibility for the pre-elementary school must designate an administrator also exercises responsibilities for the daily management of the program.

(c) Specific responsibilities and duties of the governing body must be written and communicated to the administrator of the pre-elementary school and staff when applicable.

(d) A pre-elementary school shall:

(1) provide an educational program and facility which meets the requirements of 4 AAC 60.009 - 4 AAC 60.191.

(2) provide the department with a description and the name of the owner of the land and building in which the pre-elementary school is located.

(3) ensure the confidentiality of records and information pertaining to an individual child or the parents, except as required by program staff in working with the child and the family, or when a release of information form is signed by the parents.

(4) maintain current individual records including but not limited to

(A) individual child emergency information records, maintained on forms provided by the department unless prior department approval is given to use alternate forms.

(B) staff employment and health records;

(C) child attendance records.

(D) child progress records;

Why?!?

You can find red-top almost anywhere -

(5) maintain bodily liability insurance (including transportation coverage if applicable) in an amount not less than \$100,000 per child, \$300,000 per accident with a company authorized to write insurance policies and must contain the following endorsement:

"In the event of cancellation or non-renewal of this policy, the company agrees to give 30 days prior notice to the Department of Education, Pouch "F", Juneau, Alaska 99811."

(6) have written materials covering, admission policy, nondiscrimination, provisions which can be made for the special needs of individual children, program philosophy, program goals and objectives, samples of daily schedules or lesson plans, behavior management policies, provisions for parental involvement, enrollment requirements and procedures, fees and payment arrangement plans, insurance coverage, transportation arrangements, parental permission for trips and related activities outside the classroom, cold weather outdoor play policies, cold weather closure, child abuse reporting, illness or accident policies, disclosure of information, and notifications of changes in program; these materials must be presented and explained to parents at the time of enrollment or at the time of the change, and a copy filed with the department. (Eff. / / , Reg.)

Hog-wash!

Authority: AS 14.07.020

4 AAC 60.070. CERTIFICATE OF APPROVAL. Repealed.

4 AAC 60.079). ENSURING CARE IN EMERGENCY. (a) A pre-elementary school must have a plan for the complete evacuation of all children including the handicapped in case of fire or other disaster. The plan must include provisions for accountability for each child until released to an appropriate authority. The plan must be written and posted. Staff must be aware of the plan, and the staff must hold evacuation drills at least once every month.

(b) Provision must be made in all pre-elementary school facilities for emergency electrical lighting by generator or battery power for use in case of power failure.

\$\$\$

(c) Pre-elementary school facilities shall have a telephone or radio-phone if that service is locally available. Emergency telephone numbers must include fire, police, physician, poison control, and must be conspicuously posted on or adjacent to the telephone.

(d) In all pre-elementary school facilities, first aid supplies appropriate to the size of the facility must be maintained and readily available for use at all times.

(e) A facility must have at least one staff member with a current first aid certificate on duty at all times unless first aid courses are not regularly available in the community in which the facility is located. If courses are not regularly available, the pre-elementary school must enroll one or more employees in the first available first aid course offered in the community to meet this requirement.

(f) A staff member, who, in the performance of duties, has cause to believe that a child has suffered harm as a result of abuse or neglect shall immediately report the harm to the nearest office of the Department of Health and Social Services. If the staff cannot reasonably contact the nearest office of the Division of Family and Youth Services of the Department of Health and Social Services, and immediate action is necessary for the well-being of the child, the administrator shall make the report to a peace officer.

(g) A pre-elementary school must have a written emergency back-up staffing plan for periods when only one staff member is on duty.

(h) When a child is left in the pre-elementary school after the closing of the program without contacting the staff, or making alternative arrangements for the care of the child, the administrator shall report the child to the nearest office of the Department of Health and Social Services. (Eff. / / , Reg.)

*Changed
to the
better*

Authority: AS 14.07.020
AS 47.17.

4 AAC 60.080. INSURANCE. Repealed.

4 AAC 60.089. ADMINISTRATOR QUALIFICATIONS. (a) The administrator of a pre-elementary school is responsible for the screening, scheduling and supervising of all staff, volunteers and others who provide services in the pre-elementary school, and for designating a staff member to be in charge of the facility in the administrator's absence.

(b) The administrator of a pre-elementary school must be at least 19 years of age.

(c) The administrator shall furnish the names, addresses, and telephone numbers of three persons unrelated to the administrator, who could provide character references to the department with the certificate application; the references, one of which must be from a supervisor in previous work experience, shall attest to the character and reputation of the administrator and to the management and interpersonal skills which enable the administrator to work successfully with children, staff, and parents. ???

(d) An individual may not be the administrator of a pre-elementary school if the individual is under indictment or has been convicted of a felony or has had a child adjudicated as a child in need of aid within the last five years. The department will require a release to review law enforcement records for each administrator. In this subsection, "child in need of aid" means a child who has been adjudicated a dependent child under AS 47.10.010 or under a similar statute in another state or jurisdiction.

(e) The administrator must also meet the staff qualifications in 4 AAC 60.099. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.090. RECORDS. Repealed.

4 AAC 60.099. STAFF QUALIFICATIONS. (a) A staff member shall possess tuber. 'lin clearance before contact with children in a facility.

(b) A staff member, excluding parent classroom volunteers, must furnish the names, addresses, and telephone numbers of three positive references unrelated to the staff member, who will attest to the ability of the applicant to meet the qualifications of this section.

(c) A staff member must have reached the age of 18 to be counted toward meeting the staff-to-child ratio requirements. However, persons aged 14 and older may be employed as staff members and counted toward staff-to-child ratio requirements if he or she:

(1) works under the close supervision of an adult staff member;

(2) constitute no more than one third of the total staff; and

(3) is not placed in sole charge of a group of children in a classroom;

(4) is enrolled in or has completed a training program in early childhood education or another related field, or have demonstrated competence to an administrator.

(d) A staff member must be able to

(1) provide children with a variety of learning and social experiences appropriate to their ages;

(2) recognize and act against hazards to health and physical safety.

(e) The administrator shall provide an orientation for a new employee within the first month of employment, including:

(1) administrative procedures, program goals and objectives and description of state regulations;

(2) specific written personnel policies including written job responsibilities;

(3) crisis management, duties to be carried out in an emergency, and emergency and safety procedures;

(4) acceptable behavior management techniques, outlined in the pre-elementary school's discipline policy;

appropriate resources to carry out the assigned responsibilities. (Eff. / / , Reg.)

Authority: IS 14.07.020

4 AAC 60.100. PHYSICAL EXAMINATIONS FOR CHILDREN. Repealed.

4 AAC 60.110. Repealed.

4 AAC 60.115. is amended to read STAFF. (a) A facility must have sufficient personnel to ensure that the children are never left without supervision by a responsible staff member.

(1) there must be one staff member for every ten children between three and five years of age;

(2) there must be one staff member for every fifteen children between five and six years of age;

(b) In a facility where there are more than ten children present, there must be a minimum of two staff members on the premises.

(c) In a pre-elementary school, only a staff member who spends at least 75 percent of his or her working time in direct contact with children will be counted in meeting staff-to-child ratios. (Eff. / / , Reg.)

*Montessori
is presently
1 to 20*

Authority: AS 14.07.020

4 AAC 60.119. ENVIRONMENT REQUIREMENTS. (a) A pre-elementary school facility must have sufficient indoor and outdoor space in relation to the number and ages of children to accommodate the physical safety and the developmental needs of children served. Satisfactory compliance with this subsection requires that:

(1) there be a minimum of ¹¹35 square feet of indoor space per child capacity used for the care of children, exclusive of hallways, bathrooms, lockers, closets, laundry and furnace rooms, and the kitchen;

(2) there be at least 75 square feet per child of outdoor play space for the maximum number of children on the playground at any one time. Where outdoor play space is not available at the facility, parks or other outdoor facilities that are easily accessible may be used.

(b) A pre-elementary school must have appropriate storage and work space for children and staff, convenient to the areas of use, to accommodate the following functions:

(1) record storage and administrative functions;

(2) food preparation and serving, if applicable;

(3) meeting space for staff;

(4) storage of program materials and resources for staff and parents;

Register , 1983

EDUCATION

4 AAC 60.120

4 AAC 60.140

(5) storage of repair and maintenance supplies.
(Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.120. RECOGNITION OF SPECIAL NEEDS. Repealed.

4 AAC 60.129. FIRE SAFETY. (a) The building housing a pre-elementary school must meet the standards for buildings and life safety contained in 13 AAC 50.010 - 13 AAC 50.030 and 13 AAC 55.010-13 AAC 55.150. Copies of documents indicating satisfactory compliance with standards must be filed with the department before the issuance of a certificate.

(b) When the department receives a certification application from a pre-elementary school and when any new construction or remodeling is completed, a fire inspection of the premises must be made by the fire marshal or his or her local designee to determine conformity with existing safety standards. Subsequent annual fire inspections may be required by the department. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.130. DISASTER PLAN. Repealed.

4 AAC 60.139. SANITATION AND ENVIRONMENTAL PROTECTION. (a) Pre-elementary school facilities must meet applicable standards for sanitation and environmental protection set out in 18 AAC 30.800 - 18 AAC 30.890.

(b) When the department receives a certification application from a pre-elementary school or when any new construction or remodeling is completed, an environmental health inspection by the Department of Environmental Conservation or its local designee to determine conformity with existing standards must be made. Copies of documents indicating satisfactory compliance with standards must be filed with the department before the issuance of a certificate. Subsequent annual inspections shall be required by the department. (Eff. / / , Reg.)

*Duplicates
Local inspections*

Authority: AS 14.07.020

4 AAC 60.140. FACILITY INSPECTIONS. Repealed.

4 AAC 60.149. HEALTH PROGRAM. (a) Pre-elementary school staff shall not administer medicines or drugs to a child except with written permission of the child's parent and physician or other medical authority. In the case of prescription medicine, a prescription label with the medical authority's name, the child's name, and a recent date may be accepted as showing that the drug may be administered to the child. Medicines or drugs kept at the pre-elementary school for a child must be clearly marked with the child's name and the dosage, and must be inaccessible to children.

(b) A pre-elementary school must provide a place where a tired, ill, injured, or upset child may rest or play quietly, apart from other children, yet under adult observation. Ill children need not be sent home as a routine policy, but may be cared for at the pre-elementary school at the administrator's discretion and with the concurrence of the parents.

(c) If a child appears to be more than moderately ill or a communicable disease other than a cold is indicated, the child must not be allowed to expose other children to the illness and must be isolated in a separate room under adult observation until appropriate arrangements are made. Staff members shall inform parents when their children have been exposed to illness or communicable disease.

(d) Children under age six, who attend a pre-elementary school for periods longer than four hours must have a time and place to lie down and sleep, or rest quietly. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.150. CHANGES IN MAJOR WRITTEN POLICIES, PLANS, PROGRAMS. Repealed.

4 AAC 60.159. IMMUNIZATIONS REQUIRED. (a) The administrator of a pre-elementary school shall maintain evidence of current immunization, or the exemption permitted by subsection (b)(1), for each child in attendance. This evidence must be obtained from the child's parent or guardian upon admission, and show that the child has received or has begun and is continuing to receive immunizations appropriate to age as prescribed in the Alaska Division of Public Health's schedule for active immunization or that the child is exempt from immunization under (b) of this section. Satisfactory compliance requires that each child's health record contain evidence of immunization or evidence of exemption. Evidence of immunization must include

19

(1) the name of the health service provider, and the date of immunization against diphtheria, tetanus, polio, measles, rubella, and, if the child is less than six years of age, pertussis; and

(2) valid immunization certificates, which are limited to

(A) an international immunization certificate; or

(B) a statement by a physician listing the date each required immunization was given; or

(C) a copy of a clinic or health center record listing the date each required immunization was given.

(b) Evidence of exemption of immunization must include

(1) a signed affidavit by a doctor (M.D.) or osteopathy (P.O.) licensed in Alaska, attesting that immunizations would, in his or her professional opinion, be injurious to the health of the child or members of the child's family or household; or

(c) A pre-elementary school in a community where regular medical services are not available on at least a weekly basis may provisionally admit a child who does not have the required immunizations for a reasonable period of time, but for no longer than 90 days. Provisional admissions must be reported to the communicable disease control section of the Division of Public Health of the Department of Health and Social Services, which shall then determine that the required immunizations are completed during the provisional period if the child is to be admitted for full time attendance.

(d) A pre-elementary schools may not admit a child who does not comply with the requirements of this section. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.160. NONDISCRIMINATION. Repealed.

4 AAC 60.169. NUTRITION. (a) To ensure adequate nutrition and promote good eating habits and attitudes, a pre-elementary school must ensure that

(1) at least one nutritious meal is offered to each child in the program for five hours per day or more; meals may be provide by the program or the parents or guardians;

(2) a snack is offered between breakfast and lunch and between lunch and dinner;

(3) with all snacks and meals offered, the National Academy of Science's Recommended Dietary Allowances, 9th Ed. 1980*, is met.

(b) Vitamins and mineral supplements may be provided to a child only with written parental permission, and only in dosage indicated by.

(c) Children may be encouraged but may not be forced to eat. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.170. is amended to read PROGRAMMATIC REQUIREMENTS OF THE PRE- ELEMENTARY SCHOOLS. (A) The educational program conducted in a pre-elementary school must provide pre-planned experiences which promote the individual child's physical, emotional, social and intellectual growth. Satisfactory compliance of this section requires that:

(1) staff members generally follow a written schedule of daily activities based on program's philosophy, goals and objectives. The program must provide a balance of quiet and active, group and individual, indoor and outdoor, teacher-directed, and child-initiated activities, as well as adequate time for meals, snacks, sleep, and toileting according to individual needs, as appropriate. The daily schedule must include:

(A) opportunities for individual self-expression in conversation, imaginative play, art, and creative expression;

(B) vigorous physical activities and gross motor activities, both indoors and outdoors, weather permitting.

*EDITOR'S NOTE: This document is available from book stores or the division of family and youth services, Department of Health and Social Services.

*Who says
what is
satisfactory:
the school?
the child?
the Department?*

20

(C) opportunities for intellectual and social development through use of a variety of books, games, toys, crafts, puzzles, blocks, and other activities and materials.

(2) the amount and variety of materials and equipment available, and its arrangements and use, must be appropriate to the developmental needs of the children and

(A) the quantity of materials and equipment is sufficient to avoid excessive competition and long waits by children;

(B) individual storage areas must be accessible to each child for storage of his own belongings;

(C) furniture and equipment must be durable and safe and developmentally appropriate;

(3) staff members may not use any form of corporal punishment unless approved in writing by the parent or guardian of the child and they may not use any other technique which is humiliating, cruel, shaming, or otherwise damaging to the child. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.175. is amended to read TRANSPORTATION. (a) A pre-elementary school must provide means for transporting children in case of emergency.

(b) A vehicle used in transporting children must be licensed in accordance with state law.

(c) A staff member of the pre-elementary school or other person acting on behalf of the program operating a vehicle for the purpose of transporting children shall be properly licensed to operate that class of vehicle according to state law.

(d) A pre-elementary school must ensure that there is prudent supervision in a vehicle used by the program to transport children, including but not limited to, use of seat belts, and prohibit riding in the back of open pickup trucks and other similar open vehicles. (Eff. / / , Reg.)

Authority: AS 14.07.020

*Who or how
is this to
determine
"appropriate"
"sufficient"*

21

4 AAC 60.180. DEFINITIONS. Repealed.

4 AAC 60.191. EXCEPTIONAL CHILDREN. In accordance with AS 14.30.180-350, pre-elementary schools shall cooperate with school districts in identifying exceptional children between the ages of three and five. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.199. DEFINITIONS. In AAC 60.009 - AAC 60.191, unless the context requires otherwise

(1) "administrator" means the person 19 years of age or older, delegated the responsibility for the daily management of the pre-elementary school;

(2) "board" means the governing body of the program;

(3) "certificate" means a certificate of approval issued to the pre-elementary school from the Department of Education;

(4) "certification representative" means a representative employee of the Department of Education given the responsibility to conduct reviews and on-site inspections of pre-elementary schools to determine compliance with this chapter;

(5) "commissioner" means the Commissioner of Education;

(6) "department" means the Department of Education;

(7) "division director" means the director of the Division of Educational Program Support;

(8) "exceptional children" means children who are handicapped or gifted;

(9) "facility" means the administration, program and physical plant of a program calling itself a pre-elementary school.

(10) "gifted" means exhibiting outstanding intellect, ability or creative talent within the meaning of 4 AAC 52.130;

(11) "guardian" means an individual who is appointed by a court to manage the affairs of another person;

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

orig
October 19, 1983

The Honorable Mae Fischer, Chair
Health, Education and Social
Services Committee
500 "L" Street, Suite 310-G
Anchorage, AK 99501

Dear Mae:

Thank you for your various communications on matters related to preschool regulations. In our conversations nearly two months ago, I recall saying that the Department of Education (DOE) would not propose regulations for action by the State Board but that we would proceed with the process and wait for action to clarify the laws and the intent of the Legislature during the forthcoming session. We proceeded on that basis and requested further public comment. We have certainly had that.

The important responsibility for the Legislature in the matter is a clear determination of a public policy for preschool programs, public and private. I know you understand that the Department of Education and the State Board have no interest in developing regulations unless there is a legal basis for such regulations contained in the statutes.

Ernestine Griffin, President of the State Board, and the Department are ready to work with the Legislature at your forthcoming session to define the State responsibility for public and private preschool programs. If your committee has direction or data for us to prepare, we are ready to go to work. There is important work to be done to resolve these matters.

I regret that I was unable to reach you even from Chena Hot Springs by radio telephone. Your staff members were most helpful in our efforts to communicate.

Sincerely,

Harold Reynolds, Jr.
Commissioner

cc: Ernestine Griffin, State Board President
Members of the State Board
Richard Luther
Annie Calkins

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.



Alaska State Legislature

House

JUNEAU ALASKA

October 21, 1983

FOR IMMEDIATE RELEASE
Contact: Rep. Mae Tischer
277-2486

ANCHORAGE - A public hearing scheduled for October 24 concerning proposed regulations of pre-school education was postponed indefinitely by Rep. Mae Tischer.

Tischer, chairman of the House Health, Education, and Social Service Committee, said she is postponing the meeting because the proposed regulations have been "pulled back" by Harold Reynolds, commissioner of the Department of Education.

Tischer said she has been assured that Reynolds will not present the proposed regulations to the state education commission at its upcoming meeting in Anchorage on October 31 and November 1.

But Tischer stressed, "I'm not cancelling the hearings, just postponing them. The commissioner has decided to pull back these regulations, but I don't know for how long."

The Anchorage Republican credited a large public outcry against the regulations for helping force Reynolds to reconsider his stance on the regulations.

"The public outcry against the regulations has been overwhelming," Tischer said. "I've been told that the governor, commissioner Reynolds, and the state board of education have received over 5,000 letters of protest. And I don't know how many telephone calls they've received."

"It seems very clear to me that the people have spoken," Tischer added.

More than 700 people attended a committee meeting in Anchorage on October 21, with most of those protesting against the proposed regulations.

However, Tischer spoke with Gov. Sheffield on Friday, October 21, and was told that the governor was also concerned about the proposed regulations.

"The governor said that sometimes in the bowels of government this happens," Tischer said.

Tischer said she and Sen. Jan Faiks, R-Anchorage, are scheduled to meet with Sheffield within the next week in an attempt to permanently resolve the problem.

Last session, House Bill 357 was overwhelmingly approved by both the House and Senate, but was then vetoed by Sheffield. House Bill 357 would have allowed the Department of Education to have sole authority to supervise pre-elementary schools, but would have prohibited the state licensing and supervision over the educational component of religious pre-schools that are non-profit and do not receive state or federal funding.

After the veto, Commissioner Reynolds proposed additional regulations for religious pre-schools.

"The public is now calling for a veto override," Tischer said. "The House passed it by a 28-9 vote and the Senate voted 18-2 in favor of the legislation. It was a very non-partisan issue.

"Yet, Reynolds says he now wants to wait for a message next session to see how the legislature deals with this issue. That's what the department of education told us last session. These response to that was passage of House Bill 357.

"What type of response does he want, a 20-0 and 40-0 vote? I think the legislature - and the public - have made their feelings very clear."

#

STATE OF ALASKA

DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

GOLDBELT PLACE
801 WEST 10th STREET
POUCH F
JUNEAU, ALASKA 99811

October 12, 1983

The Honorable Joe L. Hayes
Speaker of the House
1024 West 6th, Room 201 C/E
Anchorage, Alaska 99501

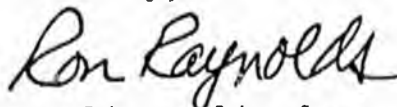
Dear Mr. Speaker:

Thank you for your letter inquiring about the promulgation of regulations for preschools. The questions concerning preschool regulations arise because of the veto of House Bill 357 by Governor Sheffield. The matter of legislative action and intent will remain unclear until a resolution of the issues can be worked out during the next legislative session.

Ernestine Griffin, President of the State Board of Education, and members of the Board plan to work closely with the Legislature and the Department of Education to clarify the intent of the Legislature and the Governor on matters related to preschools, both public and private.

No regulations concerning preschools will be enacted until statutes and legislative intent are clarified. You may be sure that ample opportunities will be provided for public input, if and when preschool regulations are developed pursuant to statutes.

Sincerely,



Harold Reynolds, Jr.
Commissioner

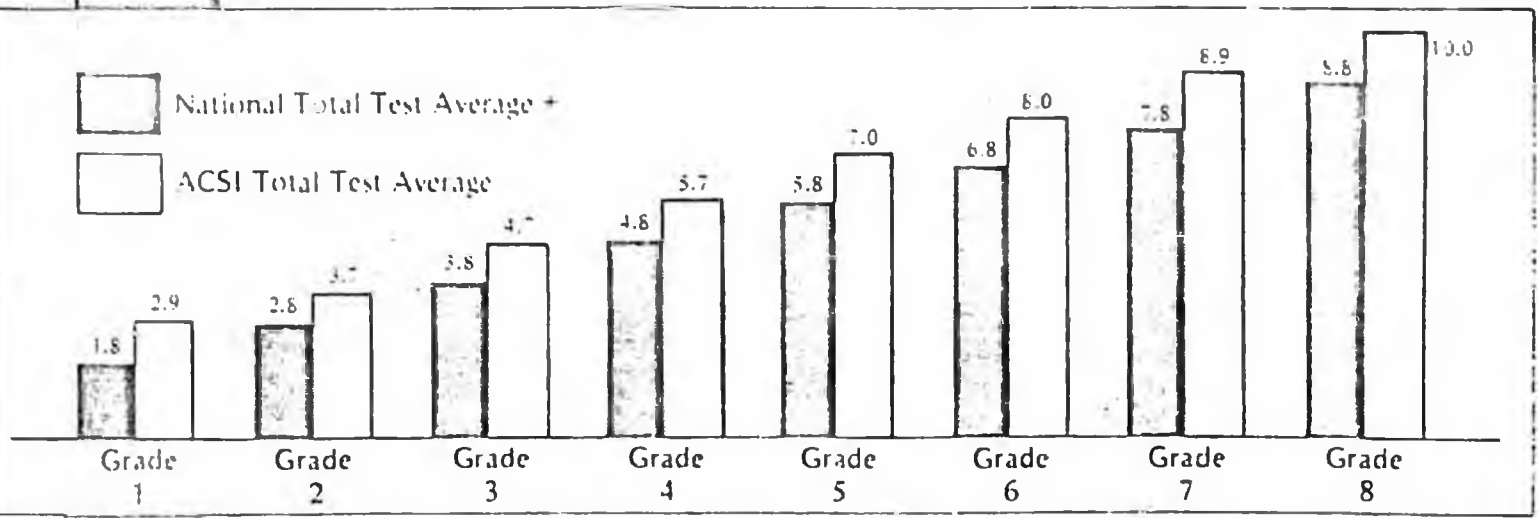
cc: Ernestine Griffin
State Board Members
Richard Luther
Annie Calkins
Steve Hole
Alison Elgee

ACSI students score higher than the National Average!



1981-82 School Year

Year after year testing shows that ACSI students score higher than the National Average at every grade taught.



1st graders are 11 months *above* the National Average



2nd graders are 9 months *above* the National Average



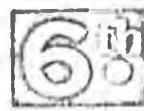
3rd graders are 9 months *above* the National Average



4th graders are 9 months *above* the National Average



5th graders are 12 months *above* the National Average



6th graders are 12 months *above* the National Average



7th graders are 11 months *above* the National Average



8th graders are 12 months *above* the National Average



ACSI students are compared to some 225,000 students that were carefully selected to represent average students across the United States (1973). The figures represent the average (median) of all tests at each grade level. The test used was the 1973 Stanford Achievement Test, Form A.

+ TOTAL TEST INCLUDES:

- | | | |
|-------------------|----------|----------------|
| vocabulary | math | social science |
| reading | spelling | science |
| word study skills | language | listening |

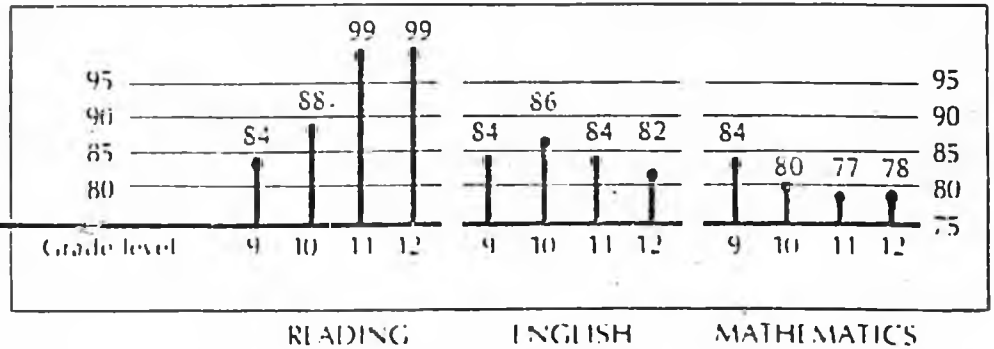
What about ACSI HIGH SCHOOL students? 1981-82 School Year

How do they compare?

ACSI PERCENTILE RANKS *

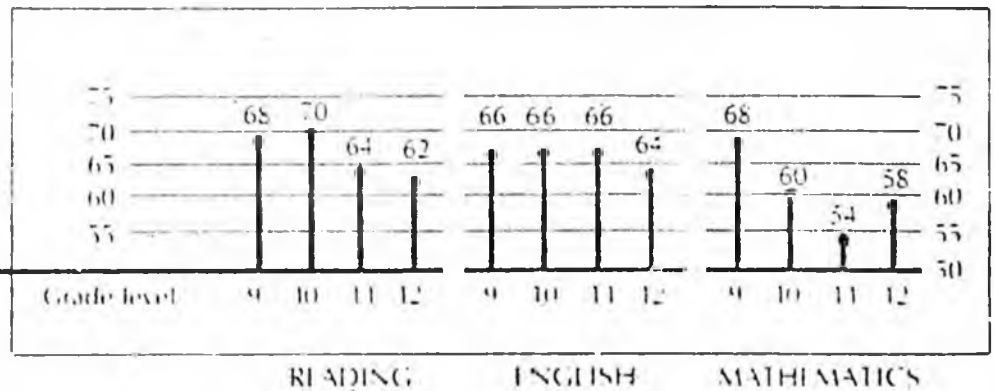
TOP QUARTER
OF THE
NATIONAL GROUP

75
National Average
75th percentile



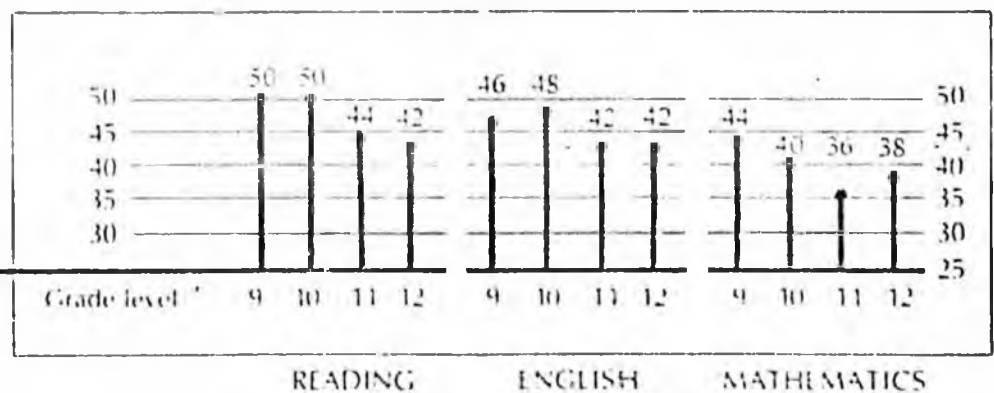
NATIONAL
AVERAGE

50
National Average
50th percentile



BOTTOM QUARTER
OF THE
NATIONAL GROUP

25
National Average
25th percentile



* This indicates the relative standing of ACSI students in comparison with students of the same grade status in the National Norm Group. For example, a score of 70 means the ACSI students equaled or exceeded 70% of the National Group that took the test.

HOUSE HESS
COMMITTEE MEETING
AGENDA

DATE: May 13, 1983

TIME: 1:00 p.m.

I. Call Meeting to Order

- A. Note Committee Members Present
- B. Welcome Those Observing
- C. Remind those wishing to testify to sign up, and those giving testimony to speak up and state their names.

II. Announce Legislation Under Consideration:

HB 357 An act relating to the regulation of religious
schools. STATEWIDE TELECONFERENCE

Other notes or reminders:

FULL CALENDAR NEXT WEEK

- HB 357/SB 261: Legislation relating to the regulation of private, non-profit, religious schools which are exempt from federal tax and do not receive state or federal funding.
- Sec. 1: Such schools will self-regulate the educational component (curriculum, text books, class schedules, kinds of toys, quantities of materials etc.) of their pre-elementary programs.
- Sec. 2: Legislation relating to such schools is deleted from present statutes and reintroduced under new statutes.
- Sec. 3: A policy statement declaring the right to freedom of religion guaranteed by the constitution of the United States and the state of Alaska.
- Sec. 4: Repealing the statute which authorizes the state to grant diplomas to 8th grade graduates.
- Sec. 5: Such schools will, at least once a year, submit to a nationally standardized test for students attending grades one, three, six and nine.
- Sec. 6: Such schools will make available regular monthly attendance reports and annual reports. Such schools will operate on a regular schedule at least nine calendar months of the year.
- Sec. 7: Such schools who comply with this chapter are not subject to any other provision of law relating to education except requirements of law respecting fire, safety, sanitation, immunization and physical exams.
- Sec. 8: Such schools will administer their own program of education at the elementary, secondary and adult levels.

NOTE: Statues governing health requirements are not affected in this bill. (See attached copy).

Article 2. Physical Examinations.

Section	Section
60. Repealed	120. Certificate of physical examination
65. Supervision	125. Immunization
70. Physical examination required	130. Repealed
80. Repealed	170. Repealed
110. Repealed	

Sec. 14.30.060. Repealed. (Sec. 59 ch 98 SLA 1966)

Sec. 14.30.065. Supervision. The program of physical examination and immunizations prescribed by sections 65—125 of this chapter shall be under the general supervision and in accordance with regulations of the Department of Health and Social Services. (Sec. 42 ch 98 SLA 1966; am Sec. 1 ch 131 SLA 1967; am Sec. 6 ch 104 SLA 1971)

Sec. 14.30.070. Physical examination required. (a) The governing body of each school district shall provide for and require a physical examination of every child attending school in the district. The examination shall be made when the child enters school or, in areas where no physician resides, as soon thereafter as is practicable, and thereafter at regular intervals considered advisable by the governing body of the district.

(b) The Department of Health and Social Services may require the district to conduct additional physical examinations which it considers necessary, and may reimburse the district for the additional examinations on the basis and to the extent the commissioner of health and social services prescribes by regulation.

(c) Examinations shall be made by a competent physician, except that if the services of a physician cannot be obtained or if authorized by the commissioner of health and social services examinations may be made by a nurse. (Sec. 37-7-11 ACLA 1949; am Sec. 10 ch 118 SLA 1949; am Sec. 1 ch 72 SLA 1953; am Sec. 43 ch 98 SLA 1966; am Sec. 6 ch 104 SLA 1971)

Sec. 14.30.080 — Sec. 14.30.110. Repealed. (Sec. 59 ch 98 SLA 1966)

Sec. 14.30.120. Certificate of physical examination. The school board, when physical examinations are made, shall deliver to the parent, guardian, or other person having the responsibility for or control of the child a report signed by the physician or nurse making the examination, specifying the findings with respect to the health and physical well-being of the child. (Sec. 37-7-13 ACLA 1949; am Sec. 12 ch 118 SLA 1949; am Sec. 44 ch 98 SLA 1966)

Sec. 14.30.125. Immunization. If in the judgment of the commissioner of health and social services it is necessary for the welfare of the children or the general public in an area, the governing body of the school district shall require the children attending school in that area to be immunized against the diseases the commissioner of health and social services may specify. (Sec. 45 ch 98 SLA 1966; am Sec. 2 ch 131 SLA 1967; am Sec. 6 ch 104 SLA 1971)

Sec. 14.30.130—14.30.170. Repealed. (Sec. 59 ch 98 SLA 1966)



CHRISTIAN SCHOOL COMMUNICATOR

AACS NATIONWIDE STUDENT ACHIEVEMENT TESTING PROGRAM

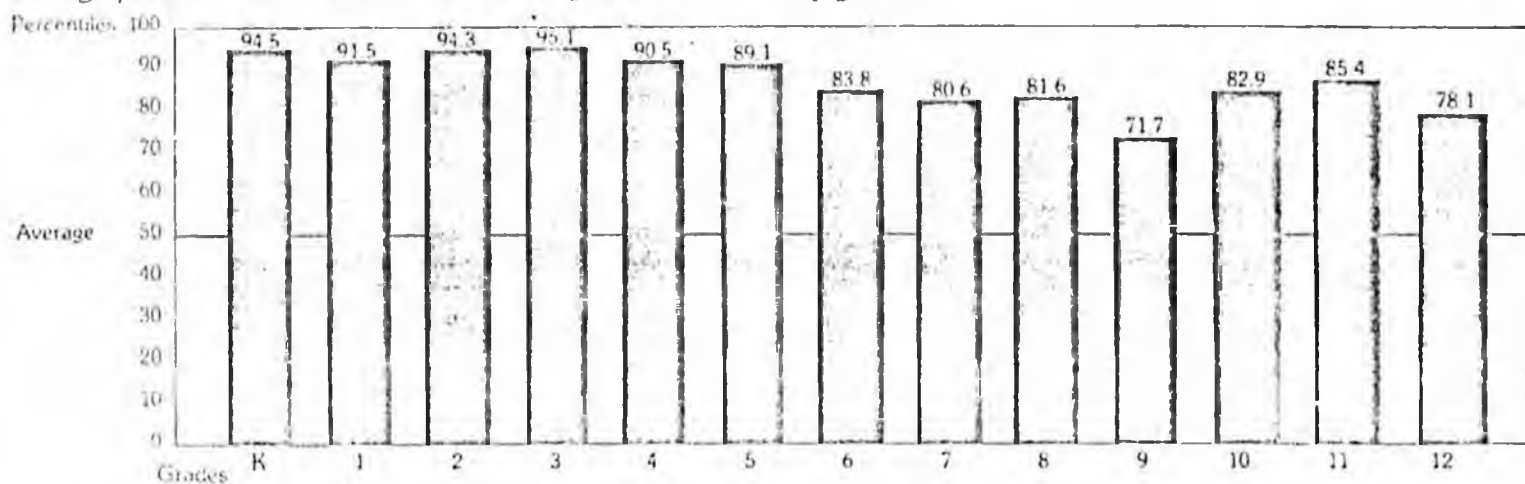
By Dr. Bruce Jackson, Educational Director
American Association of Christian Schools

What can be said about the academic achievement of Christian schools? Are students learning anything besides Bible? How do Christian schools compare with other schools across the country?

Perhaps the new testing program of the American Association of Christian Schools will help to answer some of these questions. AACS has been working with the publisher of the Stanford Achievement Tests and the Otis-Lennon School Ability Test (I.Q. Test) to develop a testing program for AACS member schools. Besides the national norms that are typically given on scoring sheets, the Christian school also receives a set of scores that reflect the norms of AACS schools only. These additional scores allow a school the opportunity to observe how the academic achievement of its students compares to the achievement of all of the students in schools involved in the testing program. For example, if the average percentile for the various test categories of the

fourth grade of a particular school were the 60th percentile, that school would know that its four grade program was above average as compared to the other Christian schools. A score at the 60th percentile simply means that 60% of the students' scores ranked below that point and 40% ranked above. A program that was average compared to the other Christian schools would receive a score of approximately the 50th percentile.

The first AACS testing was scheduled for this past November (1982). Schools received scores as described above which allowed that school to compare the achievement of its students with those in other Christian schools. In addition, each school also received scores based upon national norms which included public, private, and parochial schools across the country. The following chart illustrates the average achievement of AACS schools participating in this initial test sampling by grade:



Looking over the chart, one can see that the Christian schools demonstrated outstanding achievement as compared to national norms. Ninth-graders had the lowest average of all the grades, yet that was almost 22 points above the national average (50th percentile).

Some cautions need to be noted with regard to the use of these scores. These scores indicate the achievement of those schools involved in the November testing and thus, are not necessarily representative of all Christian schools. An individual school should advertise its own scores rather than the averages of Christian schools in general.

Why do Christian schools do so well? There are several reasons why Christian schools are able to demonstrate such superior achievement:

1. The student learns in a disciplined environment where the teacher maintains firm, but loving control over the classroom. Students are taught how to properly develop self-government so that they are able to recognize and fulfill their God-given responsibilities.
2. A Christian philosophy of education demands

an emphasis on the basics. Thus, the curriculum is designed so as to offer such basic instruction as phonetic instruction in reading beginning in Kindergarten. Much time is spent on basic reading and arithmetic skills in the lower grades.

3. The Christian teacher is definitely a key to the success of the Christian school. A Christian school teacher is one who has been led by the Lord into the ministry of Christian schools. The teacher is not looking for personal gain, but rather for an opportunity to give of oneself.
4. Parents of Christian school students tend to be vitally concerned about their children's education. Part of their parental responsibility to their children is to spend time at home reinforcing the work of the school.

Thus, one who thoroughly understands the Christian school movement is not surprised at such achievement. Parents and schools should properly use the testing results so as to continually improve the achievement of students. After all, it is part of one's Christian testimony to always do one's best.

SB 261 AND HB 357

Summary of the Legislation

SB 261 and HB 357 deal exclusively with private church schools and schools operated by religious organizations and, as amended, are modeled after the legislation adopted by North Carolina in 1979 and by West Virginia in 1982 to remedy church-state constitutional conflicts. These laws, if enacted by the Legislature, would establish requirements that must be met by private religious schools in order for parents whose children attend them to satisfy the compulsory education law. They would also exempt pre-elementary and nursery programs operated by religious organizations from the supervision of the Departments of Education and of Health and Social Services. The purpose of these bills is to remedy existing church-state constitutional conflicts by protecting the guaranteed religious freedom of church schools in Alaska and, at the same time, to balance the state's interest in assuring that each child receives a good education.

This legislation only covers schools, pre-elementary programs or nursery programs operated by a church or other nonprofit religious organization exempt from federal taxation and not receiving state or federal funding. These are constitutionally protected groups and activities.

More specifically, church schools (or denominational schools as defined in the proposed legislation) would be required to maintain attendance and immunization records. Since current compulsory education laws make parents liable for their children's failure to attend school, these bills, as amended, would require the parents to file statements with the public school authorities to establish their children's attendance at a church sponsored private school. By placing the requirement on the parent, the bills avoid the constitutional problems created by the state's excessive entanglement in religious activities. The school would also be required to operate on a regular schedule, at least nine calendar months per year, and to be subject to reasonable fire, health, and safety regulations.

To ensure that children attain certain minimum standards, each religious school would be required to administer a nationally standardized test to students in the first, third, sixth and ninth grades and to make the school results available for the Department of Education. This would satisfy the state's interest in compulsory education and still avoid the constitutional problem of excessive state entanglement in religion.

Any church school that satisfied all the requirements of AS 14.45 would be exempt from any additional provision of law relating to education except those requirements of law relating to fire, health, and safety.

Constitutional Requirements

The changes set out in SB 261 and HB 357, as amended, are required to correct existing Alaskan laws which run afoul of the constitutional mandate requiring the states to avoid excessive entanglement in religious activities. The state's right to impose minimum requirements on private religious schools is very limited, because these religious activities are protected by the First Amendment of the United States Constitution and its identical counterpart in the Alaska Constitution, Art. I, sec. 4.¹

Schools operated by churches or by nonprofit religious organizations are quite different from other private schools. They enjoy a constitutionally protected status.

"Church operated schools are generally integral parts of their sponsoring churches. Their superintendents are generally pastors or assistant pastors of the sponsoring churches; their teachers are generally members; and their doctrinal stances are generally set by the sponsoring churches."²

Federal and state courts recognize that operating a church school is an integral part of the free exercise of religion.³ For many churches, it is in fact the ministry of the church. Because church operated schools clearly come within the First Amendment free-exercise clause, their activities are constitutionally

¹ E.g., Kentucky State Bd. for Elem. & Secondary Education v. Rudasill, 589 S.W.2d 877 (Ky. 1979), cert. den., 446 U.S. 938 (1980); Wisconsin v. Yoder, 406 U.S. 205 (1972); Lemon v. Kurtzman, 403 U.S. 602 (1970); Pierce v. Society of Sisters, 268 U.S. 510 (1925).

² "State Regulation of Private Religious Schools in North Carolina -- A Model Approach," 16 Wake Forest Law Review 405, 431-32 (1980).

³ See, e.g., NLRB v. Catholic Bishop, 99 S. Ct. 1313 (1979) (Catholic parochial schools are founded for religious reasons and religious doctrine is pervasive); Surinach v. Pesquera de Busquets, 604 F.2d 73 (1st Cir. 1979) (private Catholic schools are an integral part of the Catholic Church and as such "involve substantial religious activity and purpose"); Hunt v. McNair, 413 U.S. 734, 743 (1973) ("[R]eligion is so pervasive that a substantial portion of [religious school] functions are subsumed in the religious mission."); Lemon v. Kurtzman, 403 U.S. 602, 616 (1971) ("[T]he parochial schools constituted 'an integral part of the religious mission of the Catholic Church'. . . In short, parochial schools involve substantial religious activity and purpose.").

protected as fundamental rights.⁴

In the area of First Amendment individual liberties, any state legislation that burdens parents', childrens', or a church's free exercise of religious beliefs is unconstitutional unless, the state can demonstrate "a compelling state interest in the regulation of a subject within the state's constitutional power to regulate." Sherbert v. Verner, 374 U.S. 398, 403 (1963).

To establish the existance of a compelling state interest, it is not enough for the state to merely show that a rational relationship exists between a colorable state interest and the proposed regulation. According to Sherbert, "[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation."

More importantly, the state must demonstrate that it is using the least burdensome method for addressing the compelling state interest. The current law violates this mandate, because the legislative goals can be achieved with less burdensome methods. SB 261 and HB 357, as amended, use North Carolina and West Virginia laws as models and are less burdensome while still accomplishing legislative goals.

Eventhough SB 261 and HB 357, as amended, would create two classes of private schools and treat them differently, these bills would not violate the Equal Protection clause of the Fourteenth Amendment. According to established legal principles⁵, the equal protection guarantee of the Fourteenth Amendment does not take from the state legislatures all power to classify persons or objects. The state may classify persons for the purpose of legislation. Classification is an inherent right and power of the legislature.

The important issue for these proposed bills is whether the distinction between private schools operated for profit and private schools operated by churches is based on a real and substantial difference between the two classes. Clearly, there is a substantial difference. The decision of the legislature to recognize its limited ability to regulate church schools is based on a constitutional distinction between the two classes. Church schools are in a protected class, enjoying the protection of the First Amendment. Private schools are not.⁶

⁴ ibid.

⁵ 16A Am Jur 2d, Constitutional Law, §746, et. seq.

⁶ In addition, it must noted that the motivations for operating a private school for profit and a school operated by a church are entirely different.

In the area of religious freedom and expression, the Constitution demands neutrality. The government cannot demonstrate a hostility toward religion or religious activity. The mere fact that the government specifically exempts religious groups from complying with certain laws does not violate the Constitution. For example, federal law clearly creates two classes when it exempts the property and income of religious organizations from federal taxation. These two classes parallel the two classes which would be created by SB 261 and HB 357, as amended. The Supreme Court held this was proper legislation in Walz v. Tax Commission, 397 U.S. 664,669 (1970). The Supreme Court found that neither the purpose nor the effect of such exemption was to advance or inhibit religion. It was "benevolently neutral."

The distinction between private schools operated for profit and those operated by churches is real and parallels distinctions created by the federal tax laws. Therefore, there is no violation of equal protection guarantees.

In summary, the present law violates both the United States Constitution and the Alaska Constitution. SB 261 and HB 357, as amended, balance the state's interest in ensuring that each child receives a good education with the fundamental right to religious freedom and should be adopted.

HB 357

* Section 1. AS 14.07.020 (8) is amended to read:

(8) in cooperation with the Department of Health and Social Services, exercise general supervision over public and private pre-elementary schools and over the educational component of nurseries as defined in AS 47.35.080 (4) excluding pre-elementary schools and nurseries operated by a church or other nonprofit religious organization that is exempt from federal taxation provided the program does not receive state or federal funding; pre-elementary schools in this paragraph means schools for children ages three through five years when the schools' primary function is educational;

* Section 2. AS 14.30.010 (b)(1) is amended to read:

(1) is provided an academic education comparable to that offered by the public schools in the area, either by

(A) attendance at a private school in which the teachers are certificated according to AS 14.20.020;

(B) tutoring by personnel certificated according to AS 14.20.020; [OR]

(C) except as provided in (D) of this paragraph, attendance at a private school in which the average student proficiency is not less than the average proficiency found in the public schools in the area as measured by national achievement tests; the department with assistance from representatives of the private schools shall promulgate regulations defining the subject areas to be tested and the minimum average scores to be achieved; or

(D) attendance in an educational program operated by a church or other nonprofit religious organization that is exempt from federal taxation provided the program does not receive state or federal funding and provided that the church or other nonprofit religious organization elects to comply with the provisions of AS 14.45;

* Section 3. AS 14.45.015 is added to read:

Sec. 14.45.015. POLICY. In conformity with the fundamental right to freedom of religion guaranteed by the constitutions of the United States and of Alaska, it is the public policy of the State in the matters of education by religious organizations that the state shall not control or interfere with the rights of conscience or with religious liberty. The State further finds that there is no compelling reason to interfere with this fundamental right.

* Section 4. AS 14.45.020 is repealed.

* Section 5. AS 14.45.025 is added to read:

AS 14.45.025. STANDARDIZED TESTING REQUIREMENTS. Each school operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding and that has elected to comply with this chapter shall administer, at least once in each school year, a nationally standardized test or other nationally standardized equivalent measurement selected by the chief administrative officer of such school, to all students enrolled or regularly attending grades one, three, six and nine. The nationally standardized test or other equivalent measurement selected must measure achievement in the areas of English grammar, reading, spelling and mathematics. Each school shall make and maintain records of the results achieved by its students. For one year after testing, all records shall be made available to the parents at the principal's office, and the school composite test results shall be made available at all reasonable times for annual inspection by a duly authorized representative of the State of Alaska.

* Section 6. AS 14.45.030. is amended to read:

Sec. 14.45.030. ATTENDANCE AND ANNUAL REPORTS REQUIRED.

(a) Teachers and others in charge of private [OR DENOMINATIONAL] schools not operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding and that has elected to comply with AS 14.45 shall make regular monthly attendance reports and annual reports to the commissioner in the same manner as teachers and superintendents in the public schools.

(b) The enrollment and attendance of a child in a school operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding shall be filed with the local public school superintendent by the parent, guardian or other person in charge or control of the child on a form provided by the superintendent which shall be countersigned by the administrator of the church school and returned to the public school superintendent by the parent. Should said child cease attendance at a church school, the parent, guardian, or other person in charge or control of the child shall by prior consent at the time of enrollment direct the church school to notify the local public school superintendent that said child no longer is in attendance at a church school.

(c) Each school operated by a church or other nonprofit religious organization exempt from federal taxation and which does not receive state or federal funding shall make and maintain monthly attendance records for each student enrolled and regularly attending classes. Such school shall operate on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year.

* Section 7. AS 14.45.035 is added to read:

AS 14.45.035. REQUIREMENTS EXCLUSIVE. No school operated by any church or other nonprofit religious organization exempt from federal taxation which does not receive state or federal funding and which has complied with this chapter shall be subject to any other provision of law relating to education except requirements of law respecting fire, safety, sanitation, *physical* and immunization. *examinations*

* Section 8. AS 44.27.020(1) is amended to read:

(1) administer the state's program of education at the elementary, secondary, and adult levels, including, but not limited to, programs of vocational education and training, vocational rehabilitation, library services, correspondance courses, adult basic education, and fire-service training, but not including degree programs of postsecondary education or an educational program operated by a church or other nonprofit religious organization that is exempt from federal taxation if the program does not receive state or federal funding and if that school has elected to comply with the requirements of AS 14.45;

* Section 1. AS 14.07.020 (8) is amended to read:

(8) in cooperation with the Department of Health and Social Services, exercise general supervision over public and private pre-elementary schools and over the educational component of nurseries as defined in AS 47.35.080 (4) excluding pre-elementary schools and nurseries operated by a church or other nonprofit religious organization that is exempt from federal taxation provided the program does not receive state or federal funding; pre-elementary schools in this paragraph means schools for children ages three through five years when the schools' primary function is educational;

* Section 2. AS 14.30.010 (b)(1) is amended to read:

(1) is provided an academic education comparable to that offered by the public schools in the area, either by

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(B) tutoring by personnel certificated according to AS 14.20.020; [OR]

(C) except as provided in (D) of this paragraph, attendance at a private school in which the average student proficiency is not less than the average proficiency found in the public schools in the area as measured by national achievement tests; the department with assistance from representatives of the private schools shall promulgate regulations defining the subject areas to be tested and the minimum average scores to be achieved; or

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* Section 4. AS 14.45.020 is repealed.

* Section 5. AS 14.45.025 is added to read:

AS 14.45.025. STANDARDIZED TESTING REQUIREMENTS. Each school operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding and that has elected to comply with this chapter shall administer, at least once in each school year, a nationally standardized test or other nationally standardized equivalent measurement selected by the chief administrative officer of such school, to all students enrolled or regularly attending grades one, three, six and nine. The nationally standardized test or other equivalent measurement selected must measure achievement in the areas of English grammar, reading, spelling and mathematics. Each school shall make and maintain records of the results achieved by its students. For one year after testing, all records shall be made available to the parents at the principal's office, and the school composite test results shall be made available at all reasonable times for annual inspection by a duly authorized representative of the State of Alaska.

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(b) The enrollment and attendance of a child in a school operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding shall be filed with the local public school superintendent by the parent, guardian or other person in charge or control of the child on a form provided by the superintendent which shall be countersigned by the administrator of the church school and returned to the public school superintendent by the parent. Should said child cease attendance at a church school, the parent, guardian, or other person in charge or control of the child shall by prior consent at the time of enrollment direct the church school to notify the local public school superintendent that said child no longer is in attendance at a church school.

(c) Each school operated by a church or other nonprofit religious organization exempt from federal taxation and which does not receive state or federal funding shall make and maintain monthly attendance records for each student enrolled and regularly attending classes. Such school shall operate on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year.

* Section 7. AS 14.45.035 is added to read:

AS 14.45.035. REQUIREMENTS EXCLUSIVE. No school operated by any church or other nonprofit religious organization exempt from federal taxation which does not receive state or federal funding and which has complied with this chapter shall be subject to any other provision of law relating to education except requirements of law respecting fire, safety, sanitation, *physical* and immunization. *examinations*

* Section 8. AS 44.27.020(1) is amended to read:

(1) administer the state's program of education at the elementary, secondary, and adult levels, including, but not limited to, programs of vocational education and training, vocational rehabilitation, library services, correspondence courses, adult basic education, and fire-service training, but not including degree programs of postsecondary education or an educational program operated by a church or other nonprofit religious organization that is exempt from federal taxation if the program does not receive state or federal funding and if that school has elected to comply with the requirements of AS 14.45;

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 18, 1983

SUBJECT: Regulation of religious schools
(HB 357)

TO: Representative Milo Fritz

FROM: Keith B. Levy *KBL*
Legislative Counsel

RECEIVED
MILO FRITZ, M.D.
APR 19 5 21 PM '83

You have requested a sectional analysis of HB 357, an Act relating to the regulation of religious schools. In general, the bill amends certain sections of Title 14 of the Alaska Statutes to remove state control of schools operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding for its educational program.

Section 1 of the bill amends AS 14.07.020(8) to remove pre-elementary schools and the educational component of nurseries operated by these religious groups from the supervision of the Department of Education. The law currently requires the Department of Education to supervise these programs.

Section 2 of the bill amends AS 14.30.010(b)(1) to exempt children attending a school operated by one of the religious organizations described above from the requirement that children between seven and 16 years of age attend public school. It also makes clear that these schools need not have an average student proficiency that is at least equal to the average proficiency found in public schools in the same area. AS 14.30.010(b)(1) currently requires such proficiency of all private schools.

Section 3 excludes the schools described above from the provisions of AS 14.45.020. As presently written, AS 14.45.020 allows the commissioner of education to furnish final examination questions and grant diplomas for eighth graders in private schools.

Section 4 amends AS 14.45.030 to exempt the schools described above from monthly attendance and other reporting requirements currently applied to public and private schools.

Section 5 amends AS 44.27.020(1) to exclude the schools described above from the general duty of the Department of Education to administer the state's program of education.

You should be aware that HB 357, as currently written, presents a constitutional problem with respect to the equal protection clauses of the state and federal constitutions. The bill exempts certain private schools from requirements that apply to all other private schools. The factors that distinguish the exempt schools from the nonexempt schools are their federal taxation exemption status, that the educational programs involved do not receive state or federal funding, and that they are operated by a church or other nonprofit religious organization.

The equal protection clause of the Constitution of the State of Alaska (Article I, section 1) has been interpreted to mean that legislative classifications

...must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

Isakson v. Rickey, 550 P.2d 359, 363 (Alaska 1976). Accordingly, the distinguishing factors mentioned above must meet this test if HB 357 is to survive a constitutional attack. Although some of the distinguishing factors do meet the test, at least one probably does not.

Singling out schools which do not receive state or federal funds for exemption from certain state requirements probably has a fair and substantial relationship to the goals of the legislation in the sense that the state has less of an interest in controlling such schools. The same may be true of schools with nonprofit status under federal taxation laws. However, a provision which singles out a school merely because it is operated by a church or other religious organization is subject to greater scrutiny. The legislature may be called upon to justify treating a private, nonprofit school which does not receive state or

Representative Milo Fritz
Page 3
April 18, 1983

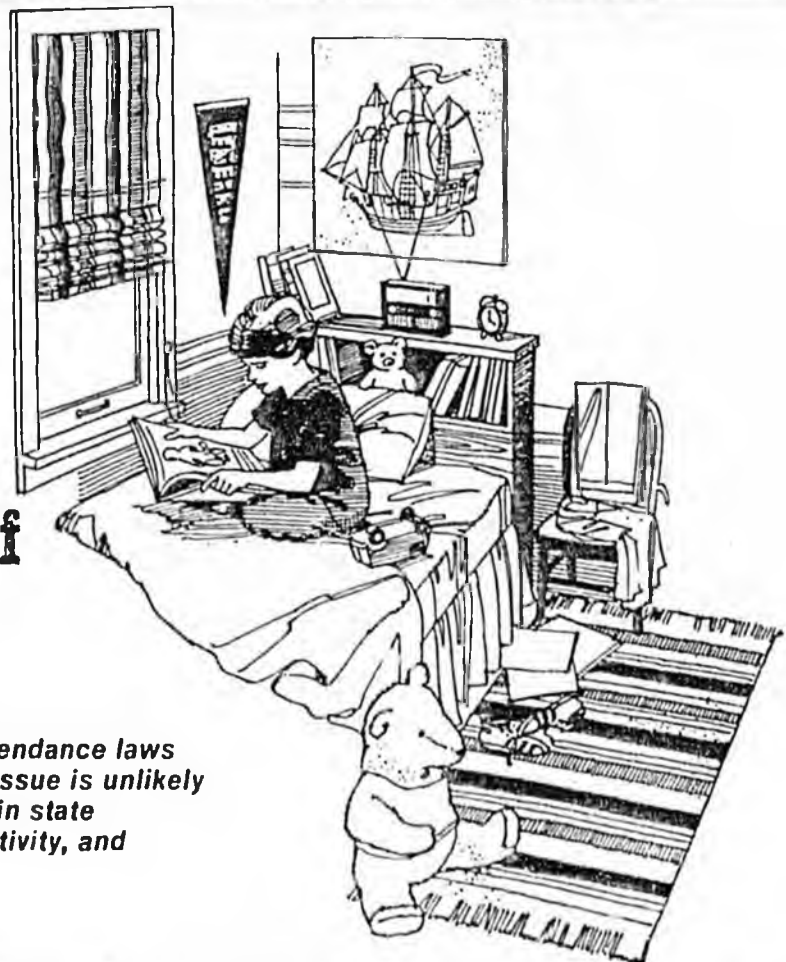
federal funding in a different manner than a private, nonprofit school which does not receive federal funding and is operated by a church or other religious organization. The only difference between the two classes of schools is that one is run by a religious group and the other is not. To justify such a distinction, the legislature would have to show a very substantial relationship between the distinction and the goals of the legislation. Moreover, the goals of the legislation must be constitutionally legitimate. In my opinion, the classifications created by HB 357 lack this level of justification to the extent that they are based solely on religion. For this reason, the bill is probably unconstitutional.

KBL:ljb
15/009

State Regulation of Private Education

by Patricia M. Lines

Violations of state compulsory school attendance laws appear to be rising dramatically, and the issue is unlikely to go away. Ms. Lines details the trends in state regulation, the current wave of judicial activity, and the implications for public policy.



Although a good education is generally considered crucial to a child's future economic success and personal happiness, a growing number of people believe that traditional schooling is neither indispensable to education nor "right" for every child. Thus some parents are enrolling their children in unaccredited private schools or teaching them at home, whether or not such choices are acceptable under compulsory school attendance laws.

Parents who violate such laws risk criminal charges, fines, jail sentences, and other forms of legal compulsion. Under most state laws, a child who is declared a truant may be institutionalized. Resisting school attendance requirements takes its toll in other ways as well, the judicial process is rarely easy on the participants.¹

PATRICIA M. LINES is director of the Law and Education Center, Education Commission of the States (ECS), Denver. Copies of the complete report from which this article comes ("Private Education Alternatives and State Regulation," Pub. No. LEC-82-3) are available at \$4.50 each from the Law and Education Center, ECS, 1860 Lincoln St., Denver, CO 80295. The research for this article was supported by ECS state fees and by grants from the Carnegie Corporation, the Spencer Foundation, and the Ford Foundation. The conclusions are the author's own and do not necessarily reflect the views or policies of these agencies.

But despite the serious personal consequences for parents and for children, violations of state compulsory school attendance laws appear to be rising dramatically, presenting policy makers with one of the most serious issues facing them today.

Nontraditional Schooling

Parents who place their children in unauthorized educational programs have a variety of reasons. Those who choose home schooling often see public schools or publicly approved private schools as too traditional or too conservative. By contrast, the growing number of parents who send their children to fundamentalist Christian schools tend to feel that the public schools are too liberal or devoid of the moral and religious instruction that they see as crucial to children's education. These disparate groups have two things in common: a rejection of the ideal of the U.S. public school as melting pot and a willingness to defy the law in the interests of their children.

The public education system is caught in the middle, unable to please everyone but responsible for enforcing compulsory attendance laws against those who disagree with the values that undergird the public school program.² Some state and local officials wonder whether compulsory attendance is important enough to be treated as a criminal offense, with stiff

penalties imposed on parents for seeking what they believe to be the best education for their children. Others worry that children in unaccredited programs may not be acquiring the essential skills for good citizenship and self-sufficiency; they are also concerned about the long-range implications of allowing large segments of the population to insulate themselves from the mainstream of society. Still others fear that private schools provide havens for those who seek to avoid racial integration.³ One state official expressed a private suspicion that hucksters, interested only in tuition payments, were running one particular fundamentalist Christian school. Meanwhile, a few state officials have recognized the financial implications for public schools of the trend toward nontraditional schooling, which is siphoning off students and thus enrollment-based state aid.

This issue is unlikely to go away. In fact, the number of families choosing nontraditional educational options seems to be increasing. The Census Bureau estimates that enrollments in non-Catholic private schools increased from 615,548 in 1965 to 1,433,000 in 1975.⁴ These figures probably cover only established, accredited schools, however.⁵ Families choosing unaccredited schools neither seek nor want state approval, and they probably do not want to be counted by the Census Bureau. Many of the unau-

Some states have consciously deregulated private schools. These states expressly limit state authority to promulgate regulations.

thorized schools are fundamentalist Christian schools, which reject state authority over their operations as a matter of faith. Some refuse even to provide information on themselves. Using techniques designed to locate all hard-to-find schools in a sample of 22 counties, Bruce Cooper and Donald McLaughlin estimate that there are 15,000 non-Catholic private schools in the U.S., serving two million children; they also estimate that enrollments in these schools are increasing at a rate of 100,000 per year.⁶ It seems likely that the largest growth in attendance has occurred among small, unaccredited schools.

Many other children in the underground education movement are taught at home. John Holt, an educator and author whose Boston-based organization, Holt Associates, provides support services for home instruction, estimates that there are more than 10,000 families educating their children at home in defiance of compulsory education laws. Others believe the number to be much higher.

If enrollment figures are hard to come by, data on the quality and goals of unaccredited education programs are even more elusive. Virginia Nordin and William Turner have attempted to locate and evaluate fundamentalist Christian schools in Wisconsin and Tennessee. From their own observations and the scant available data, they have concluded that supporters of these schools are motivated by strong religious beliefs, not by segregationist attitudes.⁷

The scant amount of available evidence from standardized tests suggests that these unaccredited alternatives are educationally adequate. Test scores introduced as evidence in a few lawsuits suggest that children's performances improve after they are enrolled in unauthorized educational programs.⁸ Test data from a home tutorial network in Los Angeles showed children in the tutorial program scoring higher than children in the public schools. However, the researchers did not control for parents' socioeconomic status, and pretest data were not available.⁹

Trends in State Regulation

Traditionally, compulsory school attendance laws have served as the mechanism for enforcement of minimum standards for private education. Punishment for breaking those laws has been directed at parents and children, not at those who offer private instruction. Typically, the basic requirement of these laws is school attendance, although some states require education of the child. These laws almost always mandate fines and jail sentences for parents who fail to comply; frequently they make children subject to truancy

charges and possible institutionalization. In nearly every state, the local superintendent or school board and the local prosecuting attorney are responsible for identifying truants, i.e., children who are not enrolled in an approved educational program. In most states, local officials also have primary responsibility for approving home instructional programs, if such programs are allowed by state law. Local boards may also have responsibility for approving private schools, but the state often assumes this task. The criminal sanctions in compulsory attendance laws appear to have been designed for parents who are guilty of neglecting their children's education.

Acceptable ways of complying with a compulsory education requirement vary widely among the states. Some states demand certification of teachers and schools, some require that only the schools be approved, and some merely require minimal evidence that schooling takes place. At one end of the spectrum, such states as Alabama, Iowa, Nebraska, North Dakota, West Virginia, and Wisconsin have obtained state court approval for at least some aspects of the regulation of private educational alternatives. Those states with more flexible requirements will probably experience less litigation, unless the state boards exercise their broad statutory authority to impose more stringent standards. Connecticut, for example, provides a broad exception to the school attendance requirement; parents who do not send their child to public school must educate the child themselves or "show that the child is elsewhere receiving equivalent instruction in the studies taught in the public schools."¹⁰ Other states that follow this model include Delaware, Idaho, New Jersey, South Dakota, and Vermont. The laws in these states typically do not specify who the teacher must be or where instruction is to take place.¹¹

Some states have consciously deregulated private schools. These states expressly limit state administrative authority to promulgate regulations. Tennessee, for example, prohibits the state board and local boards from regulating faculties, textbooks, or curricula in church-affiliated schools.¹² Prior to the passage of a new law in North Carolina, the state board had gradually expanded its regulations governing private schools to the point of requiring that teachers' qualifications, courses of study, and textbooks be substantially the same as those in the public schools. Now North Carolina requires only that private schools keep records on pupil attendance and disease immunization and that they select and administer a nationally standardized test to students each year. The schools keep the tests on

file and make them available to state inspectors. They must also meet fire, health, and safety standards established by other laws.¹³

State law in Washington prevents state agencies from expanding on statutory provisions, but these provisions set minimum standards as to length of a school year, length of day, subjects to be taught, and teacher qualifications. Teacher certification is required, except for courses in religion and other subjects not taught in the public schools.¹⁴ This requirement is a stumbling block for many private educational alternatives. However, state law in Washington allows persons of "unusual competence" to teach, if they are supervised by certified teachers. In practice, Washington may allow private educators more flexibility than the state law would suggest.

Laws in about half of the states permit instruction at home by a parent.¹⁵ Other states permit instruction at home by a certified teacher (who may also be the parent). Of course, home instruction is permissible in any state if it meets all the requirements of a private school.¹⁶ It would not be easy for most homes to meet these requirements.

State legislators and board members, torn between strong lobbies for both public and private education, are having a difficult time dealing with the issue of regulation of private education. In states that have little regulation, such as Oregon and Idaho, bills to establish even minimal reporting requirements are failing to pass. By contrast, efforts in the state of Washington to permit instruction by a parent are also foundering in the legislature. Large numbers of state legislatures are being asked — usually by fundamentalist Christian schools — to deregulate private schools, but to date only Alabama has responded to such requests. The topic appears to be so controversial that any kind of legislative change will be very difficult.

Legislative change is not impossible, however. Both Arizona and Vermont recently modified their laws to reduce the friction between public and private education sectors. Clearly, legislative change is more desirable than change through the courts. It is less polarizing, and it minimizes personal costs for the individuals involved.

Supreme Court Guidance

In the 1920s the U.S. Supreme Court outlined in part the limits to state regulation of private education. In *Pierce v. Society of Sisters* the Court struck down an Oregon law that required attendance at public schools only. The Court held that the law "unreasonably interferes with the

liberty of parents and guardians to direct the upbringing of children under their control."¹⁷ The Court recognized as legitimate the interests of the state in compelling some form of schooling, but in this case the state had gone too far.

The Supreme Court also dealt in the Twenties with laws in Nebraska and Hawaii that were less restrictive but that still unreasonably burdened the right of parents to rear their children as they deem fit. In *Meyer v. Nebraska*,¹⁸ the Court struck down a state law forbidding the teaching of foreign languages to younger children. The Court found that this law was not rationally related to the stated

Clearly, legislative change is more desirable than change through the courts.

goal in Nebraska of cultivating good citizenship. Meanwhile, in *Farrington v. Tokushige*, the Court struck down a law regulating foreign language schools in Hawaii. These schools, which were predominantly Japanese, were required to pay fees, to submit numerous reports, to establish their commitment to the "ideals of democracy," to adhere to strict rules regarding when and how long the schools could operate each day, and to follow detailed regulations on textbooks and other matters. The Court observed that enforcement of the act "would probably destroy most, if not all," of the affected schools.¹⁹

More recent Supreme Court decisions have provided some additional guidance on the extent of state authority to regulate private education. In 1979 the Court observed in *NLRB v. Catholic Bishop of Chicago* that enforcement of federal labor laws against religious schools touches on First Amendment rights. The Court decided the issue on statutory grounds, however, holding that the National Labor Relations Act does not apply to church schools.²⁰ In 1981 the Court ruled similarly in *St. Martin Evangelical Lutheran Church v. South Dakota*, a case involving federal and state unemployment taxes.²¹ Both cases follow a Supreme Court rule that requires lower courts to construe statutes in ways that enhance their constitutionality. The Supreme Court might have upheld the statutes involved in these two cases, had the statutes expressly included church schools. But the Court avoided a decision on the issue. These two cases suggest only that state regulation of private education may sometimes go too

far, but the Court's decisions provide no detailed guidance.

Finally, in a very different kind of case, the Court ruled in 1972, in *Wisconsin v. Yoder*, that Amish families with strong religious objections to public schooling are exempt from educational programs beyond the eighth grade.²² Although the plaintiffs objected to the absence of Amish values in the public school program, they accepted compulsory school attendance in the lower grades because they believed that their children should acquire basic skills. The Court held that, *as applied to the Amish*, the compulsory attendance law in Wisconsin is unconstitutional. This ruling does not affect state compulsory attendance laws in general, even in Wisconsin.²³ *Yoder* holds only that a state cannot compel a child to attend public school in the face of strong religious objections and when the state's interest in the education of the child is adequately served by an alternative program. The Court was careful to distinguish between philosophical and religious objections to formal schooling, and it took into consideration the long tradition of the Amish.

Despite the Court's limiting language, the *Yoder* decision can be extended at several points. First, it clearly applies to religions other than the Old Order Amish, if plaintiffs demonstrate a comparable sincerity of belief and if the record shows that the states' interests are being met by adequate alternatives. To restrict the exemption granted in *Yoder* to a single religion would be unconstitutional. The *Yoder* decision may also apply to nontheistic, nontraditional religious beliefs, if the standards in *Yoder* are otherwise met.²⁴ To date the Supreme Court has not had occasion to consider extensions of *Yoder*.

Current Judicial Activity

Lower courts have followed *Yoder* only when dealing with traditional, theistic beliefs.²⁵ In other cases, despite obviously sincere religious objections to approved school programs, the courts have refused to extend *Yoder*. Some of these cases have involved fundamentalist religious schools using the self-paced Accelerated Christian Education (ACE) curriculum.

In the celebrated case of *State v. Faith Baptist Church*,²⁶ a Nebraska court examined these curricular materials and found them generally adequate. Faith Baptist Church indicated that it would not request approval of the ACE program, even though church officials had been informed informally that the state board would grant such approval. The school run by Faith Baptist Church employed no

certified teachers, and school officials refused to furnish names and addresses of students to local and state education agencies, as required by state law. The defendants, citing *Yoder*, argued that the state has no authority whatsoever over the operation of a religious school. They offered evidence, including passages from the Bible, supporting their view that religion must be integrated into teaching and that the public schools are inadequate to this task. Finally, the defendants asserted that public schools have secular humanism as their basic philosophy.

The Nebraska High Court rejected these arguments and upheld the state regulations. The U.S. Supreme Court dismissed an appeal by the school for want of a substantial federal question.²⁷ To enforce court orders to close the school, a lower Nebraska court for a time had the church door padlocked during school hours. The children transferred to an unapproved fundamentalist religious school in Iowa. The case seems far from ended, however. The local prosecutor is now seeking enforcement of the Nebraska compulsory attendance law against the parents and school officials, and the minister who operated the school was jailed for contempt of court.

Nebraska officials are now proceeding against other fundamentalist schools. One, the Park West Christian School in Lincoln, is operated by the Rev. Carl Godwin, the pastor of Bible Baptist Church. Godwin, although clearly embarrassed by the publicity, is articulate and active. He has organized the Nebraskans for Religious Freedom and has retained the legal services of William Ball, the defense attorney in the *Yoder* case. Ball has a reputation for winning cases of this kind, and Godwin is willing to report enrollment data and similar matters. Thus Godwin's case may force the courts to focus more sharply on the constitutional issues. Godwin spoke before a conference of more than 100 leaders of public and private education, sponsored by the U.S. Education Department in early May, and he seems capable of winning support from the traditional private education sector. Such support could help to bring about legislative change before court action becomes necessary.

A flurry of judicial activity involving religious schools is now in progress, with mixed results.²⁸ Most court opinions are grounded in state constitutions or statutes. Although the case law can be transferred from state to state (as guidance, not as precedent), the disparity in state constitutions and statutes does not permit broad generalizations. Of course, general rules for federal cases may emerge, but this has not yet occurred.

Home instruction is in a somewhat dif-

ferent category than instruction in an unapproved school, although the line between them is unclear. Home instruction may be entitled to even more constitutional protection, because the child/parent relationship may be entitled to constitutional protection under a right to privacy. But this idea has not been tested, and judicial reactions to it have been mixed.²⁹

Of course, judicial opinions to date on home instruction represent only the tip of the iceberg. Additional cases have been or will soon be filed in Iowa, New Hampshire, Maine, Michigan, and many other states. Given the accelerating growth of the fundamentalist Christian schools, other nontraditional private schools, and home instruction, strict state requirements for compulsory attendance in approved schools will probably continue to be challenged. As I have already noted, litigation of this type carries with it high personal costs for the individuals involved. Such litigation also has the potential to polarize supporters of public and private education.

Implications for Public Policy

Thus legislative reform seems preferable to judicial reform. Unlike the courts, legislatures are not limited to accepting or rejecting existing statutes. Their wider range of options allows for greater flexibility.

States that wish to reform the regulation of private education through legislative action might consider a shift in focus from compulsory school *attendance* to compulsory *education*. The available evidence, though scant, suggests that periodic testing of children enrolled in nontraditional educational programs may be a viable alternative to compulsory school attendance. States that move in the direction of compulsory education should probably establish minimal requirements for nontraditional programs with regard to the subjects to be taught, the amount of time per day and year to be devoted to instruction, and the reporting of enrollment and attendance figures and similar data to state officials. If a child shows unsatisfactory academic progress on standardized achievement tests, state law might require remedial instruction in an accredited or approved school.

In the interest of consumer protection, a state may wish to establish regulations that guarantee honest and fair promotion of private schools, including full disclosure of the teachers' qualifications and of the schools' educational philosophies. However, existing laws may already protect consumers adequately.

States that are concerned about the operation of schools in private homes

could amend their statutes to permit home instruction only by a child's parent(s). Statutes in such states could define "school" as instruction of children from one or more families by an unrelated teacher. (Some states may wish to emulate California, which has established separate rules for instruction at home by a tutor.)

North Carolina, Washington, and Oregon have established flexible regulations for private education that could serve as models elsewhere. In Oregon and North Carolina, test scores help to provide assurance that children enrolled in nontraditional programs are being educated. Washington relies on teacher certification for such assurance, although this gives private educational alternatives less leeway in staffing and precludes instruction by a parent in most cases. Such legislation would not be necessary, if state law did not give the state board of education or other state administrative officials broad regulatory power over private education in the first place. But such legislation is called for when a state board has gradually increased the requirements for nontraditional educational programs and the state legislature wishes to make clear its intent that statutory minimum standards are to remain *minimum* standards, not subject to expansion by administrative action.

Administrative action is probably the most peaceful means for resolving issues related to the regulation of private education. And flexible state laws make such action possible. In New Hampshire, for example, state officials have reached a somewhat fragile agreement with the fundamentalists: The state will accept school records submitted on church stationery instead of on standard state forms. Thus the state receives the information it must have to approve fundamentalist educational programs, and the fundamentalists do not feel that they are submitting to the state regulatory system. In Iowa, the state has agreed to accept reports from parents rather than from fundamentalist schools. Iowa fundamentalists see parental reports on children's schooling as analogous to the annual reports these parents file with the Internal Revenue Service. But they deem it inappropriate for the state to request such information directly from the church.

Because they are staunch supporters of public education and because they may see nontraditional educational programs as a threat to their membership, teacher unions seem likely to oppose the relaxation of state laws requiring attendance at approved schools staffed by certified teachers. These unions may argue that testing instruments are not yet sufficiently sophisticated to assure the public that adequate education is taking place. This is

probably true, but it could be argued that teacher certification is no better. Teacher certification is usually dependent on completion of a degree, which in turn is dependent on passing final examinations in college courses. (In some states, certification is also dependent on passing a competency test.) Ultimately, state legislators must decide whether testing a child, testing his or her teacher, or testing both would best provide adequate assurance that education is taking place.

Local school officials are also likely to oppose the relaxation of existing state laws regulating private education. As supporters of public education, such officials will probably be wary of the academic and social implications of nontraditional alternatives. They may also be concerned about the loss of state aid to public schools (which is based on enrollments) should more flexible regulations encourage families to choose private alternatives.

States that are sensitive to these problems could publish test data from non-traditional programs, if these data are available. They could also stand ready to revise their policies, if children in non-traditional programs fail to perform as well as they should. States should also recognize and deal with the problems caused by the loss of per-pupil aid to local school districts. For example, states might explore constitutional ways of providing partial state aid to local districts that make their school libraries, physical education facilities, art facilities, testing and guidance services, and other resources available to pupils in alternative educational programs. Such cooperation requires new laws and regulations. It also demands new relationships between state and local education officials and between public and private educational systems.

1. As an example of the extreme emotionalism that surrounds these cases, John Singer was involved in a shoot-out with law enforcement officers and was killed outside his Utah home three years ago. The officers were investigating a charge that Singer had failed to abide by his obligations under the Utah compulsory school attendance law.

2. Educators generally agree that it is nearly impossible to provide education without also imparting values. See, for example, William J. Bennett and Edwin J. Delattre, "Moral Education in the Schools," *The Public Interest*, Winter 1978, pp. 81-98; and Andrew Oldenquist, "Moral Education Without Moral Education," *Harvard Educational Review*, May 1979, p. 247.

3. There is some support for this point of view. On the heels of the school desegregation order in Mississippi, for example, that state repealed its compulsory education law, apparently to avoid requiring parents to send their children to integrated schools. Following a desegregation order in Los Angeles, an organization of parents opposed to busing formed a home instruction network that served approximately 1,000 children (see Roy A. Weaver, Anton Negri, and Barbara Wallace, "Home Tutorials vs. the Public Schools in Los Angeles," *Phi Delta Kappan*, December 1980, pp. 251-55).

4. Department of Health, Education, and Welfare, *Statistics of Public Elementary and Secondary Day Schools* (Washington, D.C.: National Center for Education Statistics, 1976), p. 6.

5. Census Bureau officials are unable to estimate the number of children enrolled in unapproved educational alternatives, according to a 10 February 1982 memorandum to the director from Paul M. Siegel, chief of the Education and Social Stratification Branch (copy on file at the Education Commission of the States).

6. Bruce S. Cooper and Donald H. McLaughlin, "The Latest Word on Private School Growth," paper presented at the annual convention of the American Educational Research Association, New York, March 1982. By contrast, public school enrollments have declined from approximately 45.9 million in 1970 to 42.6 million in 1978, according to *Statistics of Public Schools, Fall 1970* (Washington, D.C.: National Center for Education Statistics, 1971); and *Statistics of Public Elementary and Secondary Day Schools, Fall 1978* (Washington, D.C.: NCES, 1979).

7. Virginia Davis Nordin and William Lloyd Turner, "More Than Segregation Academies: The Growing Protestant Fundamentalist Schools," *Phi Delta Kappan*, February 1980, pp. 391-94. See also William Hazard, *The Flight from the Public Schools: Myth or Reality?*, a paper prepared for the Education Commission of the States, presented at the Special Advanced Leadership Programs Services Seminar for Legislators, Atlanta, 31 July 1980.

8. See *In re Rice*, 204 Neb. 732, 285 N.W.2d 223 (1979); and *State v. Shaver*, 294 N.W.2d 883 (N.D. 1980).

9. Weaver, Negri, and Wallace, pp. 253-54.

10. Connecticut General Statutes, Sec. 10-184 (1981).

11. See, for example, Delaware Code Annotated, Tit. 14, Sec. 2703 (1981); Idaho Code, Sec. 33-202 (1981); New Jersey Statutes Annotated, Secs. 18A:38-25 (West 1968); and South Dakota Compiled Laws Annotated, Sec. 13-27-3 (Supp. 1981). See also Table II in Patricia Lines, "Private Education Alternatives and State Regulation," Education Commission of the States, Pub. No. LEC-82-3, March 1982.

12. Tennessee Statutes Annotated, Sec. 49, §201-§204 (1970).

13. North Carolina General Statutes, Sec. 155C-547 *et seq.* (Cum. Supp. 1981); Sec. 115C-555 *et seq.*

(Cum. Supp. 1981); and Sec. 115C-378 (Cum. Supp. 1981).

14. Washington Revised Code, Secs. 28A.02.201 *et seq.* and 28A.27.010 (1981).

15. See Table B of Lines, "Private Education Alternatives. . ."

16. See, for example, Michigan Attorney General, Opinion No. 5579, 27 September 1979.

17. 268 U.S. 519 (1925), 534-35.

18. 262 U.S. 390 (1923).

19. 273 U.S. 284 (1927), 298.

20. 99 S.Ct. 1313 (1979).

21. 101 S.Ct. 2142 (1981).

22. 406 U.S. 205 (1972).

23. See, for example, *Meyerkorth v. State*, 173 Neb. 889, 115 N.W.2d 585 (1962); *Parr v. State*, 117 Ohio St. 23, 157 N.E. 555 (1927); *Stephens v. Bongart*, 15 N.J. Misc. 80, 189 A. 131 (1937); *State v. Hoyt*, 84 N.H. 38, 146 A. 170 (1929); *State v. Williams*, 56 S.D. 370, 228 N.W. 470 (1929); *State v. Freudenberg*, 166 Wis. 35, 163 N.W. 184 (1917); and *State v. Bailey*, 61 N.E. 730 (Ind. 1901).

24. See, for example, *United States v. Seeger*, 380 U.S. 163 (1965), in which the Court adopted a broad interpretation of the selective service law to avoid favoritism to individuals with more traditional theistic beliefs — a favoritism that would clearly violate the establishment clause.

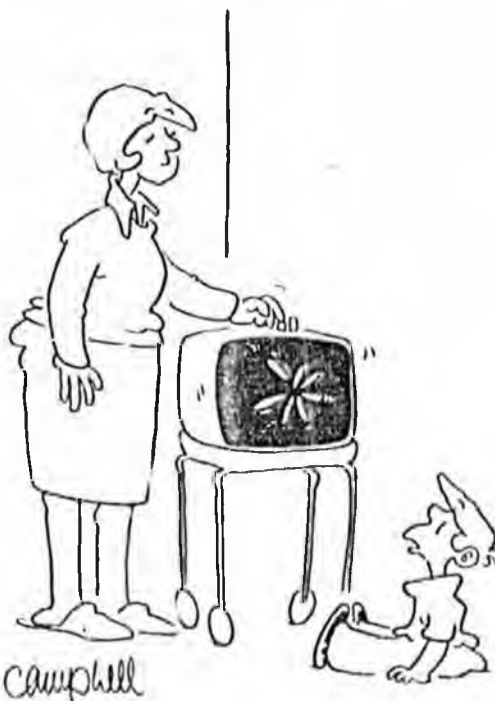
25. See, for example, *Nagle v. Olin*, 64 Ohio St.2d 341, 415 N.E.2d 279 (1980), which dealt with a non-Amish parent sending a child to an unapproved Amish school; and *State v. Nobel*, Nos. S 791-0114-A and S 791-0115-A (Mich. Dist. Ct., Allegan County, 9 January 1980), which dealt with a mother who was teaching a child at home but who refused for religious reasons to obtain a teacher's certificate, although she met the requirements.

26. 107 Neb. 802, 301 N.W.2d 571 (1981).

27. 102 S.Ct. 75 (1981). Members of the congregation of Faith Baptist Church subsequently brought suit in federal court, seeking an injunction against the state to permit continuation of the school. The court dismissed the suit, relying primarily on the Supreme Court's decision to dismiss the appeal (*Prettyman v. Nebraska*, Civ. No. 82-0-154, D. Neb., 16 April 1982).

28. For a discussion of applicable cases, see Lines, "Private Education Alternatives. . ."

29. *Ibid.* □



"Use my mind? At home?"

NOTES

Preliminary Findings

Religious and Secular Schools: Differences in State Control
Research Request 83-159
Leslie Longerbaugh, Research Staff
May 4, 1983

1. Which states allow religious schools to operate free of state control?

A. Primary and Secondary Schools

1) Five states exempt religious schools from some requirement(s) to which other private schools are subject.*

- a. Maryland
- b. Nevada
- c. Pennsylvania
- d. Tennessee
- e. Washington

Constitution?

2) Eight states do not require accreditation, approval, or licensure of any nonpublic school.*

- a. California
- b. Delaware
- c. Florida
- d. Massachusetts
- e. Minnesota
- f. New Mexico
- g. North Carolina
- h. Wisconsin

3) One state, South Dakota, has removed all state standards from all nonpublic schools. Students in the nonpublic schools must take competency tests periodically to ensure that they are receiving adequate instruction.**

4) Twenty-one states have voluntary, rather than mandatory, reporting by all nonpublic schools.*

- | | |
|----------------|-------------------|
| a. Alabama | l. Montana |
| b. Arizona | m. New Jersey |
| c. Colorado | n. North Carolina |
| d. Georgia | o. Oklahoma |
| e. Idaho | p. Oregon |
| f. Illinois | q. Tennessee |
| g. Indiana | r. Texas |
| h. Iowa | s. Utah |
| i. Kansas | t. Virginia |
| j. Louisiana | u. Wyoming |
| k. Mississippi | |

5) At least two states other than Alaska have legislation pending that would affect state control of religious schools.***

- a. Colorado
 - i. The bill would exempt both religious and secular private schools from state control.
- b. Montana
 - ii. The bill would make mandatory some of the requirements that are now voluntary.

B. Pre-schools

1) Three states now have laws exempting religious pre-schools from all state certification and inspection except for conformity with health and fire codes.****

- a. Arkansas; enacted 1981
 - i. A lawsuit has been filed challenging the constitutionality of the Arkansas law on the grounds that it denies the children who would attend such schools equal protection of the law.*****
 - a) A copy of the plaintiffs' brief in this lawsuit has been sent to us.
- b. Illinois
- c. Virginia

2) Legislatures in two states other than Alaska are now considering legislation that is similar to HR 357 in regard to pre-schools.****

- a. Arizona
- b. California

II. How do such states distinguish between religious and secular nonpublic schools for the purposes of the exemption?

- A. Religious schools for the purposes of these exemptions usually are those that are sponsored and funded entirely by a church or religious organization rather than through the state or federal government.
- B. The language used often includes a phrase such as "church-sponsored schools or schools with religious charters."

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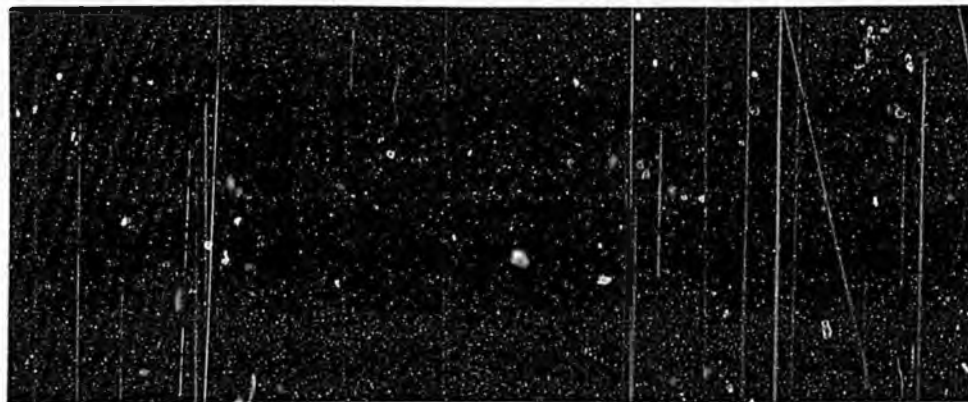
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12. Compulsory Schooling and Nontraditional Education

The Issue

Some parents today believe that traditional schooling (public or private) is not necessarily equivalent to "education" nor "right" for every child. They are placing their children in nontraditional schools (not necessarily accredited) or educating them at home. Their reasons vary. Some have overriding religious concerns; others are dissatisfied with or mistrust the public school system. Occasionally they seek only to escape the effects of public desegregation policies.

Some private options may violate state compulsory attendance laws. In some states, parents and individuals operating unaccredited private schools have received or are faced with jail sentences. One fundamentalist Christian clergyman in Nebraska has refused to comply with court orders directing him to either obtain state approval for his school or cease operating, and he has been jailed twice. A church has been padlocked to enforce laws requiring private schools to obtain state approval and comply with state rules for operating a school.

The Choice Before State Education Policy Makers

In states that require compulsory school attendance (rather than compulsory education) and require certified teachers in private schools, policy makers are being asked to change the laws. Private school people seek fewer requirements for private schools, exemption of church schools, provision for home instructions, removal of teacher certification requirements or other policies that would make it easier for individuals to choose nontraditional education options free of state accreditation or approval.

How Many Children are in Unapproved Education Options?

While most children in nonpublic schools are enrolled in Roman Catholic institutions, the U.S. Bureau of Census estimated that (as of 1975) there were close to 1.4 million children in non-Catholic, private schools. Most likely the census bureau counted only traditional and accredited schools. A more careful study for the National Center for Statistics suggests there are about 15,000 non-Catholic private schools serving approximately 2 million students, and that this population is increasing by 100,000 students per year. One might speculate that the difference of some 500,000 to 600,000 children between the official census and this study represents the number of children in unapproved schools.

By contrast, public school enrollments declined from approximately 45.9 million in 1970 to 42.6 million in 1978.

Estimates of the numbers of children being taught at home vary from 10,000 to 50,000.

Education In An Unapproved Setting

When available, testing data shows that children in these schools are performing above national standards. The data do not show whether this is due to socioeconomic status, other individual characteristics, or the education program. With this caveat, the data show children in a Los Angeles home tutorial program (approved by the state) scored higher than children in public schools on nationally standardized tests.. Experimental work done about ten years ago showed no significant difference in students' test scores whether they were taught by an experienced teacher or by a lay person knowledgeable in the subject taught. Finally, in three court cases, attorneys introduced evidence of test scores showing

improvement as children moved from a public school to a private, unapproved education option.

State Education Requirements

Traditionally, states enforce minimum standards for private education through compulsory school attendance laws, which provide for punitive action for noncomplying parents and children, but not for those who offer private instruction. Although these laws vary, they contain the following features:

- o All states have some kind of compulsory law requiring school attendance or education of children.
- o States that require education of the child rather than attendance include Connecticut, Delaware, Idaho, New Jersey, South Dakota and Vermont. Most states require school attendance, although many of these provide exceptions for home instruction.
- o Almost every state provides for jail sentences and fines for parents who fail to comply with the state's compulsory attendance law.
- o Without exception, compulsory requirements can be fulfilled by attendance at a nonpublic school that is properly approved or accredited. A number of states require the teachers to be certified, or require approval of the curriculum and similar matters.
- o Some states have recently "deregulated" private schools, and have restricted the authority of the state board of education to regulate them. These include Alabama, Arizona, Louisiana, North Carolina, and Tennessee. Washington restricts state board authority but contains a number of important statutory requirements, such as a teacher certification requirement.
- o Laws in about half the states permit home instruction by a parent whether the parent has a teaching certificate or not.
- o In some states, courts or attorneys general have ruled that if the home meets the standards for private school (generally, where a parent is a certified teacher), home instruction is allowed even if state law does not expressly so provide.

Court Challenges

The United States Supreme Court has indicated that regulation of nonpublic education can go too far. In a landmark case, Yoder v. Wisconsin, the high court narrowly ruled that Wisconsin's compulsory attendance law could not be enforced against the Amish (a religious community). The Court held that the state cannot compel attendance of children in the face of strong religious objections, so long as the children are adequately educated in an alternative setting. Lower courts have extended Yoder only when traditional religious beliefs are involved. Decisions outside of this narrow realm have been mixed, with most cases turning on state constitutional or statutory grounds.

Litigation over the status of private education has culminated in court rulings in a number of states, among them Florida, Hawaii, Iowa, Kentucky, Michigan, Nebraska, North Dakota, Ohio, Washington, and West Virginia. Generally states undergoing litigation require school attendance and certification of private school teachers. In a few states the central issue is approval of curriculum or facilities, or zoning rules. Additional cases have been or will soon be filed in many states, including Iowa, Maine, Michigan, New Hampshire, North Dakota, and Virginia. Given the growth of fundamentalist Christian schools, other nontraditional private schools and home instruction, states that require compulsory school attendance and set standards for the school will probably be challenged in the near future.

The litigation receiving the most attention from the media appears to be State v. Faith Baptist Church, dealing with the refusal of Reverend Everett Silevan to obtain approval from Nebraska for any aspect of his church-run school. The school uses a series of booklets called the Packet of Accelerated Christian Education (PACE), including instructional information and self administered tests. The school does not use state-certified teachers, a requirement under Nebraska's compulsory school attendance law. The Nebraska high court found the materials adequate, but upheld the state's requirement for certified teachers. On appeal to the United States Supreme Court, the case was summarily dismissed because, based on the papers filed before it, the high court could not identify an important constitutional issue.

Somewhat similar opinions (not going to the U.S. Supreme Court) have been handed down by state courts in Florida, North Dakota, and Wisconsin. In some of these cases, parents refused to provide any evidence about the child's schooling.

In other cases, state courts have ruled in favor of parents. In Ohio, in State v. Whisner, the state supreme court struck down a system of state regulation that, by its literal terms, left no time for religious instruction in a private school. A Michigan court was reluctant to find a mother teaching a child at home guilty under the state's compulsory attendance law, as she met the requirements for teacher certification but refused to obtain a certificate for religious reasons. (Michigan allows home instruction only by certified teachers.) In a Kentucky case, the state court applied a state constitutional provision (found only in a handful of state constitutions) that prohibits requiring a child to attend a school which parents find objectionable for conscientious reasons.

Policy Alternatives

Where statutory requirements are flexible, imaginative administrative solutions to the issue become possible. In New Hampshire, for example, state officials reached a somewhat fragile agreement with fundamentalists that required information to be submitted on church stationery rather than on official state forms. This fulfills the state's need for certain information, but recognizes the fundamentalists' tenet that they should not submit to state regulatory systems. In Iowa, the state accepts reports from parents instead of the fundamentalist school. The fundamentalists involved felt individual reporting was no different than filing an income tax form, while a church report was tantamount to church submission to state regulation.

A state considering a change in its policy can look to sister states for models. In the past five years several states have deregulated private education.

- o Tennessee, for example, prohibits the state board and local boards from regulating faculties, textbooks, or curricula in church affiliated schools.
- o North Carolina requires only that private schools keep records on pupil attendance and disease immunization and that they select and administer a nationally standardized test to students each year. The schools keep the tests on file and make them available to state inspectors. They must also meet fire, health, and safety standards established by other laws.
- o Washington prevents state agencies from expanding on statutory provisions, but these provisions set minimum

standards as to length of school year, length of day, subjects to be taught, and teacher qualifications. Teacher certification is required, except for courses in religion and other subjects not taught in the public schools. State law in Washington allows persons of "unusual competence" to teach, if they are supervised by certified teachers.

- o The Vermont legislature, following efforts by its state board to require teachers certification, made it clear it could not do so, and also strengthened its child abuse laws in order to narrowly focus on actual problems, rather than to sweepingly subject all private educators to regulation.
- o In mid-1982 the Arizona legislature determined to permit home instruction, so long as the child shows academic progress, as indicated by test scores or an impartial professional evaluation.
- o Louisiana exempted schools which receive no local, state or federal funds from most reporting requirements.
- o Arizona, Oregon, and North Carolina require testing of the children, to help provide assurance that they are being educated.
- o Teacher certification is the mechanism used in Washington, although it reduces flexibility for private education alternatives and precludes instruction by a parent in most cases.

Policy Questions

Policy makers contemplating a change in state compulsory education laws need to ask the following questions before deciding on a course of action.

- o Should compulsory attendance laws carry criminal sanctions against parents honestly acting in the best interests of their children?
- o Are the children educated in unapproved settings acquiring what they need for good citizenship and self-sufficiency?
- o What are the long-range implications of large segments of the population insulating themselves from the mainstream of society -- in this case, by avoiding state-approved education for their children?

- o Are private schools havens for those wishing to avoid integration?
- o Do existing consumer protection laws assure that parents are evaluating small nontraditional schools on the basis of adequate and correct information?
- o What are the political implications of the growing exodus from public schools, when local school districts depend on state aid based on enrollment or attendance?

Policy Implications

Organizations and individuals urging more flexible compulsory education laws argue that this is required to preserve the free exercise of religion. These groups argue that parents know what is best for the child. They include those participating in nontraditional options, fundamentalist Christians, more traditional private schools and, to some extent, organizations and individuals concerned with civil liberties. The national ACLU, for example, in its Policy #71A, states: "We believe that, in the interest of parental right to choose an alternative to public education, [home instruction with safeguards, such as approval of curriculum or testing of the child] . . . should be extended to all jurisdictions because the state's interest in assuring minimum levels of education does not extend to control of the means by which that interest is realized."

Organizations and individuals urging retention or adoption of stricter requirements for private education generally argue that these regulations are needed to assure the best interests of the child, and to prevent balkanization of society. These groups include teachers' organizations and public school administrators.

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from Van Ness

COMMENTS ON
HOUSE BILL #357
and
SENATE BILL # 361

The subject at hand has to do with House Bill #357, currently before the Legislature, and a Senate Bill with identical language for which I have no number at the present time.

This is an act relating to the regulation of religious schools.

The First Amendment to the U.S. Constitution says, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;" With these words, the First Amendment guarantees a separate church and state. Historically, this has meant that the church was not subject to the state, nor was the state subject to the church.

The First Amendment also guarantees "free exercise of religion." Our nation has repeatedly recognized the value of this most important clause and has resisted infringement of First Amendment rights of the citizenry.

It is also true that the language of the Constitution of the State of Alaska provides similar liberties to those spoken to in the Constitution of the United States.

At the outset of these remarks, it should be noted that it is the responsibility of the church to provide buildings and equipment that meet reasonable regulations for fire, life safety, health, and sanitation when they are equally and fairly applied to all.

One of the reasons for the presentation of the proposed legislation has to do with some language found in the Constitution of the State of Alaska. That language reads as follows:

ARTICLE VII. HEALTH, EDUCATION, AND WELFARE.

Section 1. The Legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

We have no quarrel with the language set forth in the paragraph above excerpted from the Constitution of the State of Alaska. However, since the provision is made that the public school system of the State of Alaska shall be free from sectarian control, we believe it follows reason and logic that the church-operated schools of the State of Alaska should be free from state control.

For this reason, we have addressed the importance of certain changes that need to be made in the present structure of the Alaska Statutes that would bring present law into line with the provision of the Federal and State Constitutions.

Our special concern has to do with the impact of present law and the resultant regulations that could be written under the umbrella of the existing language.

While we have stated above that we have no quarrel with the right of the State to require reasonable fire, life safety, health, and sanitation standards, we would never submit to the inspection of personnel, programs, finances, records, curricula, etc., since this is clearly a violation of the First Amendment, and cannot be permitted by the local church.

For these and other reasons, we have proposed an Amendment to Section 1. A.S. 14.07.020(8).

In this Amendment, we have addressed the fact that it is our sincere conviction that neither the Department of Education nor the Department of Health and Social Services has the constitutional right to general supervision over our pre-elementary schools, nor over the educational component of our nurseries.

We have also offered an Amendment to Section 2. A.S. 14.30.010(b)(i).

One of the reasons why we have suggested the addition of paragraph (D) has to do with the requirements set forth in paragraph (C). You see, it is our policy to regularly measure the progress of our students in our church-operated schools through the use of national achievement tests, and we would have no problem with making that information available to anybody on a request basis. However, since the Constitution says that no law shall be made concerning the establishment of religion, we simply believe that the State has no right to REQUIRE that information. So, we have proposed paragraph (D) as an amendment to that section.

One of the questions that has been raised with regard to paragraph (D) is as follows: "If paragraph (D) should become law, what assurance do we have that some 'fly-by-night' type church such as the Jim Jones syndrome or the Moonies won't pop up and start what they would call a church-operated school?"

Quite honestly, we don't have any assurance that that wouldn't happen. However, there are some reasons why I believe it would not happen. One of the reasons why I would question that a "Jim Jones" church or a "Moonies" church would start a school is simply that it is not as lucrative an operation as that which generally interests them. They are usually looking for ways to get their hands on large amounts of money as quickly as they can with a minimum of work involved.

The operation of a school involves a great deal of hard work, dedication, consecration, and plain, old-fashioned elbow grease!

Church-operated schools must function in a free-market society, and they simply must produce what they claim to produce, or the parents will take their children elsewhere.

My second response to the original question would be as follows: It is our understanding that laws should be made for the benefit of and the protection of the majority of the people. While it is true that there is the possibility that some church like the Jim Jones, Moonies, or Universal Life Church people might start a school under the provision of paragraph (D), why would the Legislature of the State of Alaska wish to continue to impose an unconstitutional burden on the many churches in the State of Alaska who are doing a great job in the field of private education because it was afraid a possible small minority might start an educational program that would be undesirable?

Why would the Legislature want to take away the liberties of the many because it feared the abuses of a few?

Section 3 has been amended by the Department of Law as a housekeeping measure to bring it into line with the rest of the proposed legislation in this bill.

The next item under consideration is Section 14.45.030. Once again, this is a matter where we believe constitutional liberties are being abrogated. While it is a fact that we would have no problem providing this information on a request basis in cooperation with the State Department of Education, we are convinced that it should not be required by law in order to maintain the true separation of church and state.

The last amendment proposed in this bill is found in A.S. 44.27.020(1).

This amendment is proposed in order to maintain the separation of church and state. Present law says that the Department of Education shall administer the State's program of education at the elementary, secondary, and adult levels. What we are

saying in our proposed amendment is simply that the State Department of Education does not have the right to administer the church's programs of education, since the State neither founded nor funded our church educational programs.

Respectfully submitted,

Paul E. Glover

4/18/83
PEG:hm



CHRISTIAN SCHOOL COMMENT

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No. 8

WHAT EVERY PARENT SHOULD KNOW ABOUT THE ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL

by Dr. Paul A. Kienel, Executive Director
Association of Christian Schools International

The Association of Christian Schools International (ACSI) is a non-profit service organization serving Bible-centered Christian schools and colleges. It is the largest association of Christian schools in the world with a membership of 1,933 schools and a combined student enrollment of 337,554. Over the past five years, ACSI membership has nearly doubled in size. The annual cost of school membership is \$3.00 per student payable on October 1. Most schools include this small amount in their annual student registration fee. As a parent, you need to know about the wide variety of services offered by ACSI that directly benefit your Christian school and ultimately your child or children in the school.

LEGAL/LEGISLATIVE SERVICES

Over the past five years, ACSI has raised and spent more than \$400,000 to preserve your school's religious freedom. We have had major struggles with the U.S. Department of Labor and the IRS. There have been several important victories but the struggle continues. Last week, for example, I met with U.S. Department of Education leaders in Washington, D.C. to discuss guidelines on how state departments of education can work cooperatively with Christian schools instead of attempting to control them. Next week I fly to Washington, D.C. again to meet with U.S. Department of Labor officials. We will attempt to reverse a decision made by the previous U.S. Secretary of Labor under the Carter Administration that claimed Christian school teachers are secular employees subject to government agency control. In the past ACSI has organized parent and teacher letter-writing campaigns to the White House and members of Congress on various issues. The results have been important to your school and your children.

CONVENTIONS AND CONFERENCES

Another service of ACSI is to encourage the spiritual and professional growth of your school's staff through ACSI conventions and conferences. Your child's teacher comes away from these meetings with fresh insight and inspiration for his or her ministry in the classroom. The ACSI staff of 42 people work year-round preparing for these meetings. More than 20,000 teachers, administrators and board members will attend the seventeen ACSI conventions held in the United States and Canada this year. ACSI also conducts similar programs in other countries.

ACCREDITATION AND CERTIFICATION

Under the capable leadership of ACSI's president, Dr. Roy Lowrie, Jr., the association offers a quality program of school accreditation and teacher and administrator certification. These professional services are designed to raise the spiritual and academic levels of our schools and to provide testimony to all, including government agencies, that the Christian school community has its own forms of

professional recognition. Dr. Lowrie is also the editor of *Christian School*, a professional journal for Christian school teachers and board members. It is provided free of charge to teachers in ACSI member schools.

STUDENT ACTIVITIES

Approximately 25,000 Christian school students participate annually in ACSI student activities. I am referring to speech meets, spelling bees, choir festivals, science fairs, art festivals, sporting events, piano festivals, academic meets, band festivals, cheerleader camps and student leadership conferences. Each of these events is designed to inspire leadership qualities and communication skills so that students will be effective in sharing Jesus Christ with others.

PROFESSIONAL COUNSEL

ACSI personnel are located in twelve offices throughout the country. They are available to offer counsel and information to Christian schools in the United States and Canada. The ACSI regional directors are competent leaders in the Christian school movement. Pray for them as they travel thousands of miles each year on behalf of ACSI member schools.

PROFESSIONAL BOOKS

ACSI publishes many books and manuals for parents, administrators, board members, teachers, school secretaries and students. The association also publishes a monthly teacher placement list, an annual directory of member schools and colleges, regional newsletters and our professional journal, *Christian School*. This flow of vital information is important to the quality of education in your child's Christian school. Without the strong flow of written communication provided by ACSI, the Christian school movement would soon lose its cohesive thrust.

REDUCED INSURANCE RATES

ACSI insurance programs return more than one million dollars a year to its member schools and colleges via savings in premiums and worker's compensation rebates. Many schools more than offset the annual cost of ACSI membership with savings from the group insurances offered through ACSI.

Finally, the most important thing parents should know about ACSI is that everyone who is a part of the association is vitally concerned about children and young people. The 42 staff members, the 26 people who serve on the ACSI Board and scores of others who assist with ACSI programs are all born-again believers in Jesus Christ. We are strongly committed to quality Christ-centered education. Along with the staff of your fine Christian school, we have devoted our lives to the task of inspiring the next generation to be followers of Jesus Christ. □

CHERI C. JACOBUS
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SB 261 AND HB 357

Summary of the Legislation

SB 261 and HB 357 deal exclusively with private church schools and schools operated by religious organizations and, as amended, are modeled after the legislation adopted by North Carolina in 1979 and by West Virginia in 1982 to remedy church-state constitutional conflicts. These laws, if enacted by the Legislature, would establish requirements that must be met by private religious schools in order for parents whose children attend them to satisfy the compulsory education law. They would also exempt pre-elementary and nursery programs operated by religious organizations from the supervision of the Departments of Education and of Health and Social Services. The purpose of these bills is to remedy existing church-state constitutional conflicts by protecting the guaranteed religious freedom of church schools in Alaska and, at the same time, to balance the state's interest in assuring that each child receives a good education.

This legislation only covers schools, pre-elementary programs or nursery programs operated by a church or other nonprofit religious organization exempt from federal taxation and not receiving state or federal funding. These are constitutionally protected groups and activities.

More specifically, church schools (or denominational schools as defined in the proposed legislation) would be required to maintain attendance and immunization records. Since current compulsory education laws make parents liable for their children's failure to attend school, these bills, as amended, would require the parents to file statements with the public school authorities to establish their children's attendance at a church sponsored private school. By placing the requirement on the parent, the bills avoid the constitutional problems created by the state's excessive entanglement in religious activities. The school would also be required to operate on a regular schedule, at least nine calendar months per year, and to be subject to reasonable fire, health, and safety regulations.

To ensure that children attain certain minimum educational standards, each religious school would be required to administer a nationally standardized test to students in the first, third, sixth and ninth grades and to make the school results available for the Department of Education. This would satisfy the state's interest in compulsory education and still avoid the constitutional problem of excessive state entanglement in religion.

Any church school that satisfied all the requirements of AS 14.45 would be exempt from any additional provision of law

relating to education except those requirements of law relating to fire, health, and safety.

Constitutional Requirements

The changes set out in SB 261 and HB 357, as amended, are required to correct existing Alaskan laws which run afoul of the constitutional mandate requiring the states to avoid excessive entanglement in religious activities. The state's right to impose minimum requirements on private religious schools is very limited, because these religious activities are protected by the First Amendment of the United States Constitution and its identical counterpart in the Alaska Constitution, Art. I, sec. 4.¹

Schools operated by churches or by nonprofit religious organizations are quite different from other private schools. They enjoy a constitutionally protected status.

"Church operated schools are generally integral parts of their sponsoring churches. Their superintendents are generally pastors or assistant pastors of the sponsoring churches; their teachers are generally members; and their doctrinal stances are generally set by the sponsoring churches."²

Federal and state courts recognize that operating a church school is an integral part of the free exercise of religion.³ For many churches, it is in fact the ministry of the church. Because

¹ E.g., Kentucky State Bd. for Elem. & Secondary Education v. Rudasill, 589 S.W.2d 877 (Ky. 1979), cert. den., 446 U.S. 938 (1980); Wisconsin v. Yoder, 406 U.S. 205 (1972); Lemon v. Kurtzman, 403 U.S. 602 (1970); Pierce v. Society of Sisters, 268 U.S. 510 (1925).

² "State Regulation of Private Religious Schools in North Carolina -- A Model Approach," 16 Wake Forest Law Review 405, 431-32 (1980).

³ See, e.g., NLRB v. Catholic Bishop, 99 S. Ct. 1313 (1979) (Catholic parochial schools are founded for religious reasons and religious doctrine is pervasive); Surinach v. Pesquera de Busquets, 604 F.2d 73 (1st Cir. 1979) (private Catholic schools are an integral part of the Catholic Church and as such "involve substantial religious activity and purpose"); Hunt v. McNair, 413 U.S. 734, 743 (1973) ("[R]eligion is so pervasive that a substantial portion of [religious school] functions are subsumed in the religious mission."); Lemon v. Kurtzman, 403 U.S. 602, 616 (1971) ("[T]he parochial schools constituted 'an integral part of the religious mission of the Catholic Church'. . . In short, parochial schools involve substantial religious activity and purpose.").

church operated schools clearly come within the First Amendment free-exercise clause, their activities are constitutionally protected as fundamental rights.⁴

In the area of First Amendment individual liberties, any state legislation that burdens parents', childrens', or a church's free exercise of religious beliefs is unconstitutional unless, the state can demonstrate "a compelling state interest in the regulation of a subject within the state's constitutional power to regulate." Sherbert v. Verner, 374 U.S. 398, 403 (1963).

To establish the existance of a compelling state interest, it is not enough for the state to merely show that a rational relationship exists between a colorable state interest and the proposed regulation. According to Sherbert, "[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation."

More importantly, the state must demonstrate that it is using the least burdensome method for addressing the compelling state interest. The current law violates this mandate, because the legislative goals can be achieved with less burdensome methods. SB 261 and HB 357, as amended, use North Carolina and West Virginia laws as models and are less burdensome while still accomplishing legislative goals.

Eventhough SB 261 and HB 357, as amended, would create two classes of private schools and treat them differently, these bills would not violate the Equal Protection clause of the Fourteenth Amendment. According to established legal principles⁵, the equal protection guarantee of the Fourteenth Amendment does not take from the state legislatures all power to classify persons or objects. The state may classify persons for the purpose of legislation. Classification is an inherent right and power of the legislature.

The important issue for these proposed bills is whether the distinction between private schools operated for profit and private schools operated by churches is based on a real and substantial difference between the two classes. Clearly, there is a substantial difference. The decision of the legislature to recognize its limited ability to regulate church schools is based on a constitutional distinction between the two classes. Church schools are in a protected class, enjoying the protection of the First Amendment. Private schools are not.⁶

⁴ Ibid.

⁵ 16A Am Jur 2d, Constitutional Law, §746, et. seq.

⁶ In addition, it must noted that the motivations for operating

In the area of religious freedom and expression, the Constitution demands neutrality. The government cannot demonstrate a hostility toward religion or religious activity. The mere fact that the government specifically exempts religious groups from complying with certain laws does not violate the Constitution. For example, federal law clearly creates two classes when it exempts the property and income of religious organizations from federal taxation. These two classes parallel the two classes which would be created by SB 261 and HB 357, as amended. The Supreme Court held this was proper legislation in Walz v. Tax Commission, 397 U.S. 664,669 (1970). The Supreme Court found that neither the purpose nor the effect of such exemption was to advance or inhibit religion. It was "benevolently neutral."

The distinction between private schools operated for profit and those operated by churches is real and parallels distinctions created by the federal tax laws. Therefore, there is no violation of equal protection guarantees.

In summary, the present law violates both the United States Constitution and the Alaska Constitution. SB 261 and HB 357, as amended, balance the state's interest in ensuring that each child receives a good education with the fundamental right to religious freedom and should be adopted.

a private school for profit and a school operated by a church are entirely different.

* Section 1. AS 14.07.020 (8) is amended to read:

(8) in cooperation with the Department of Health and Social Services, exercise general supervision over public and private pre-elementary schools and over the educational component of nurseries as defined in AS 47.35.080 (4) excluding pre-elementary schools and nurseries operated by a church or other nonprofit religious organization that is exempt from federal taxation provided the program does not receive state or federal funding; pre-elementary schools in this paragraph means schools for children ages three through five years when the schools' primary function is educational;

* Section 2. AS 14.30.010 (b)(1) is amended to read:

(1) is provided an academic education comparable to that offered by the public schools in the area, either by

(A) attendance at a private school in which the teachers are certificated according to AS 14.20.020;

(B) tutoring by personnel certificated according to AS 14.20.020; [OR]

(C) except as provided in (D) of this paragraph, attendance at a private school in which the average student proficiency is not less than the average proficiency found in the public schools in the area as measured by national achievement tests; the department with assistance from representatives of the private schools shall promulgate regulations defining the subject areas to be tested and the minimum average scores to be achieved;
or

(D) attendance in an educational program operated by a church or other nonprofit religious organization that is exempt from federal taxation provided the program does not receive state or federal funding and provided that the church or other nonprofit religious organization elects to comply with the provisions of AS 14.45;

* Section 3. AS 14.45.015 is added to read:

Sec. 14.45.015. POLICY. In conformity with the fundamental right to freedom of religion guaranteed by the constitutions of the United States and of Alaska, it is the public policy of the State in the matters of education by religious organizations that the state shall not control or interfere with the rights of conscience or with religious liberty. The State further finds that there is no compelling reason to interfere with this fundamental right.

* Section 4. AS 14.45.020 is repealed.

* Section 5. AS 14.45.025 is added to read:

AS 14.45.025. STANDARDIZED TESTING REQUIREMENTS. Each school operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding and that has elected to comply with this chapter shall administer, at least once in each school year, a nationally standardized test or other nationally standardized equivalent measurement selected by the chief administrative officer of such school, to all students enrolled or regularly attending grades one, three, six and nine. The nationally standardized test or other equivalent measurement selected must measure achievement in the areas of English grammar, reading, spelling and mathematics. Each school shall make and maintain records of the results achieved by its students. For one year after testing, all records shall be made available to the parents at the principal's office, and the school composite test results shall be made available at all reasonable times for annual inspection by a duly authorized representative of the State of Alaska.

* Section 6. AS 14.45.030. is amended to read:

Sec. 14.45.030. ATTENDANCE AND ANNUAL REPORTS REQUIRED.

(a) Teachers and others in charge of private [OR DENOMINATIONAL] schools not operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding and that has elected to comply with AS 14.45 shall make regular monthly attendance reports and annual reports to the commissioner in the same manner as teachers and superintendents in the public schools.

(b) The enrollment and attendance of a child in a school operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding shall be filed with the local public school superintendent by the parent, guardian or other person in charge or control of the child on a form provided by the superintendent which shall be countersigned by the administrator of the church school and returned to the public school superintendent by the parent. Should said child cease attendance at a church school, the parent, guardian, or other person in charge or control of the child shall by prior consent at the time of enrollment direct the church school to notify the local public school superintendent that said child no longer is in attendance at a church school.

(c) Each school operated by a church or other nonprofit religious organization exempt from federal taxation and which does not receive state or federal funding shall make and maintain monthly attendance records for each student enrolled and regularly attending classes. Such school shall operate on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year.

* Section 7. AS 14.45.035 is added to read:

AS 14.45.035. REQUIREMENTS EXCLUSIVE. No school operated by any church or other nonprofit religious organization exempt from federal taxation which does not receive state or federal funding and which has complied with this chapter shall be subject to any other provision of law relating to education except requirements of law respecting fire, safety, sanitation, *physical* and immunization. *examination*

* Section 8. AS 44.27.020(1) is amended to read:

(1) administer the state's program of education at the elementary, secondary, and adult levels, including, but not limited to, programs of vocational education and training, vocational rehabilitation, library services, correspondance courses, adult basic education, and fire-service training, but not including degree programs of postsecondary education or an educational program operated by a church or other nonprofit religious organization that is exempt from federal taxation if the program does not receive state or federal funding and if that school has elected to comply with the requirements of AS 14.45;

Article

1. Department of Education (Sec. 14.07.010—14.07.070)
2. State Board of Education and Commissioner of Education (Sec. 14.07.075—14.07.170)

Article 1. Department of Education

Section

10. Department of Education
20. Duties of the department
30. Powers of the department
40. Repealed
50. Selection of textbooks
52. Repealed

Section

53. Alaska School Activities Association
54. Alaska School Activities Fund
55. Repealed
57. Transmittal selections
60. Promulgation of regulations
70. Withholding state funds

Sec. 14.07.010. Department of Education. The Department of Education includes the commissioner of education, the State Board of Education, and the staff necessary to carry out the functions of the department. (Sec. 1 ch 98 SLA 1966)

Sec. 14.07.020. Duties of the department. The department shall

- (1) exercise general supervision over the public schools of the state except the University of Alaska;
- (2) study the conditions and needs of the public schools of the state and adopt or recommend plans for the improvement of the public schools;
- (3) provide advisory and consultative services to all public school governing bodies and personnel;
- (4) prescribe by regulation a minimum course of study for the public schools;
- (5) establish, in coordination with the Department of Health and Social Services, a program for the continuing education of children who are held in detention facilities in the state during the period of detention;
- (6) accredit those public schools which meet accreditation standards prescribed by regulation by the department; these shall be adopted by the department and presented to the legislature during the first 10 days of any regular session, and become effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house; (am Sec. 1 ch 126 SLA 1978)
- (7) prescribe by regulation, after consultation with the Department of Health and Social Services, standards that will assure healthful and safe conditions in the public and private schools of the state; the standards for private schools may not be more stringent than those for public schools; (am Sec. 2 ch 126 SLA 1978)
- (8) in cooperation with the Department of Health and Social Services, exercise general supervision over public and private preelementary schools and over the educational component of nurseries as defined in AS 47.35.080(4); preelementary schools in this paragraph means schools for children ages three through five years when the schools' primary function is educational.
- (9) provide accredited elementary and secondary correspondence study programs available to any Alaskan through a centralized office of correspondence study.
(Sec. 1 ch 98 SLA 1966; am Sec. 2 ch 69 SLA 1971; am Sec. 6 ch 104 SLA 1971; am Sec. 1 ch 190 SLA 1975; am Sec. 6 ch 50 SLA 1977)
- (10) review plans for construction of new public elementary and secondary schools and for additions to and major rehabilitation of existing public elementary and secondary schools and, in accordance with regulations adopted by the department, determine the extent of eligibility for state aid of a school construction project begun after the effective date of this act; for purposes of this paragraph, a "plan" includes educational specifications, schematic designs, and final contract documents.
- (11) accredit private elementary and secondary schools which request accreditation and which meet accreditation standards prescribed by regulation by the department.
(am Sec. 3 ch 126 SLA 1978)
- (12) provide educational opportunities in the areas of vocational education and training, basic education, and fire-service training to individuals over 16 years of age who are no longer attending school. (am Sec. 1 ch 86 SLA 1979)

Sect 1 →

Sec. 14.07.030. Powers of the department. The department may

- (1) establish, maintain, govern, operate, discontinue, and combine area, regional, and special schools;
- (2), (3) and (4) Repealed Sec. 1 ch 205 SLA 1970.
- (5) enter into contractual agreements with the Bureau of Indian Affairs or with a school district to share boarding costs of secondary school students;
- (6) provide for citizenship night schools when and where expedient;
- (7) provide for the sale or other disposition of abandoned or obsolete buildings and other state-owned school property;
- (8) prescribe a classification for items of expense of school districts;
- (9) acquire and transfer personal property, acquire real property, and transfer real property to federal agencies, state agencies, or to political subdivisions;
- (10) enter into contractual agreements with school districts to provide more efficient or economical educational services;
- (11) provide for the issuance of elementary and secondary diplomas to persons not in school who have completed the equivalent of an eighth or twelfth grade education, respectively, in accordance with standards established by the department;
- (12) exercise disapproval power under AS 14.08.100. (Sec 1 ch 98 SLA 1966; am Sec 1 ch 66 SLA 1968; am Sec 2, 3, 4 ch 46 SLA 1970; am Sec 1 ch 161 SLA 1975)

Sec. 14.07.040. Repealed. (Sec 34 ch 46 SLA 1970)

Sec. 14.07.050. Selection of textbooks.

(a) Textbooks for use in the public schools of the state shall be selected by district boards for district schools and by a State Schools Textbook Committee appointed by the director for state schools. Selections of the State Schools Textbook Committee shall be submitted to the Board of Directors for State-Operated Schools for approval or rejection.

(b) However, a district may elect to adopt the selection of the State Schools Textbook Committee. (Sec 1 ch 98 SLA 1966; am Sec 1 ch 96 SLA 1970; am Sec 2 ch 205 SLA 1970)

Sec. 14.07.052. Repealed. (Sec 2 ch 96 SLA 1970)

Sec. 14.07.053. Alaska School Activities Association.

(a) There is created within the Department of Education the Alaska School Activities Association.

(b) The purposes of the association are to provide for the efficient governing of interscholastic activities through the promotion of those activities and other inter-school contests or programs sanctioned by the association and to assist in the promotion of those other activities and interests as it may from time to time elect.

(c) A public or private school or school district in the state may become a member of the association if it applies for membership. The Department of Education shall make applications available to all public or private schools or school districts in the state.

(d) The governing body of the association shall be the board of control with at least one member from each judicial district on the board of control. A member of the board shall be elected from each regional activities association by the members of that region. The term of office for each member is two years, except that one-half of the members elected to the first elected board shall be elected for one-year terms under regulations prescribed by the commissioner of education.

(e) The board in consultation with the Department of Education shall appoint an executive secretary, prescribe his duties and fix his compensation. He shall serve at the pleasure of the board.

(f) The board of control of the existing Alaska High School Activities Association in office on the effective date of this Act shall serve as the initial board of control for no longer than six months.

(g) The Department of Education shall approve the association's constitution and bylaws to ensure that all regions of the state are treated on an equitable basis and in the best interests of the state. (Sec 1 ch 128 SLA 1976)

Sec. 14.07.054. Alaska School Activities Fund.

(a) The Alaska school activities fund is established within the Department of Education.

(b) The commissioner of education shall review the budget request of the Alaska School Activities Association and request a sum he approves that is equitable to all regions of the state.

(c) School districts and member schools of the Alaska School Activities Association may appropriate money to the fund. (Sec 1 of 123 SLA 1976)

Chapter 30. Pupils

Article	Article
1. Compulsory Education (Sec. 14.30.010 — 14.30.050)	3. Education for Exceptional Children (Sec. 14.30.180—14.30.350)
2. Physical Examinations (Sec. 14.30.060 — 14.30.170)	4. Bilingual-Bicultural Education (Sec. 14.30.400 — 14.30.410)

Article 1. Compulsory Education

Section	Section
10. When attendance compulsory	45. Grounds for suspension or denial of admission
20. Violation	47. Admission or readmission, when cause no longer exists
30. Report of violations and procedures	50. Truant officers
40. Repeated	

Sec 2 → **Sec. 14.30.010. When attendance compulsory.** (a) Every child between seven and 16 years of age shall attend school at the public school in the district in which the child resides during each school term. Every parent, guardian or other person having the responsibility for or control of a child between seven and 16 years of age shall insure that the child is not absent from attendance.

(b) This section does not apply if a child

(1) is provided an academic education comparable to that offered by the public schools in the area, either by

(A) attendance at a private school in which the teachers are certificated according to AS 14.20.020;

(B) tutoring by personnel certificated according to AS 14.20.020; or

(C) attendance at a private school in which the average student proficiency is not less than the average proficiency found in the public schools in the area as measured by national achievement tests; the Department of Education with assistance from representatives of the private schools shall promulgate regulations defining the subject areas to be tested and the minimum average scores to be achieved;

(am Sec. 4 ch 126 SLA 1978)

(2) attends a school operated by the federal government;

(3) has a physical or mental condition which a competent medical authority determines will make attendance impractical;

(4) is in the custody of a court or law enforcement authorities;

(5) is temporarily ill or injured;

(6) has been suspended or denied admittance according to sec. 45 of this chapter;

(7) resides more than two miles from either a public school or a route on which transportation is provided by the school authorities, except that this subsection does not apply if the pupil resides within two miles of a federal or private school which he is eligible and able to attend;

(8) is excused by action of the school board of the district at a regular meeting or by the district superintendent subject to approval by the school board of the district at the next regular meeting; (am Sec. 1 ch 10 SLA 1977)

(9) has completed the 12th grade;

(10) is enrolled in a full-time program of correspondence study approved by the department; in those school districts providing an approved correspondence study program, a student may be enrolled either in the district correspondence program or in the centralized correspondence study program;

(11) is equally well-served by an educational experience approved by the school board as serving his educational interests despite an absence from school, the request for excuse is made in writing by his parents or guardian, and approved by the principal or administrator of the school he attends. (am Sec. 1 ch 30 SLA 1976)

(Sec. 37-7-1 ACLA 1949; am Sec. 36 ch 98 SLA 1966; am Sec. 5 ch 71 SLA 1972; am Sec. 5 ch 190 SLA 1975)

(B) a person eligible to be admitted to an accredited postsecondary educational institution; and

(3) establishes financial need in accordance with standards for determining financial need adopted by the committee under 20 USC sec.1070c-2.

(b) The committee shall, by regulation, establish a system of priority in the selection of recipients of grants under sections 930-960 of this chapter under which students from "low income" families or whose incomes are considered "low income" shall be given preference in the award of the educational incentive grants.

Sec. 14.40.950. Limitation on grants. (a) No grant made under sections 930-960 of this chapter may be in an amount less than \$100 nor more than \$1,500 for each academic year.

(b) A grant awarded under sections 930-960 of this chapter may be used by a student only at an accredited postsecondary educational institution.

Sec. 14.40.955. Confidentiality of certain information. All information submitted in support of a determination of financial need as provided in this chapter is confidential. However, an applicant may inspect or copy information from his own application, or records relating to his own application, or authorize release of the application or records to designated individuals or organizations.

Sec. 14.40.960. Definitions. In sections 930-960 of this chapter

(1) "resident" means a person who, except for brief intervals, military service, attendance at an educational or training institution, or for absence for good cause shown, has resided in Alaska and who has maintained his domicile in Alaska; domicile is the true and permanent home of a person from which he has no present intention of moving and to which he intends to return whenever he is away;

(2) "undergraduate" means a student who has not completed a baccalaureate, graduate or professional degree.

(am Sec. 1 ch 51 SLA 1978)

Chapter 45. Private and Denominational Schools

Section

10. Repealed

20. Commissioner may furnish examination questions for and grant diplomas to eighth grade pupils

Section

30. Attendance and annual reports required

Sec. 14.45.010. Repealed. (Sec. 59 ch 98 SLA 1966)

Sec. 14.45.020. Commissioner may furnish examination questions for and grant diplomas to eighth grade pupils. The commissioner may furnish final examination questions for the eighth grade pupils in private and denominational schools and grant eighth grade diplomas in the same manner as in public schools. (Sec. 37-11-2 AC LA 1949)

Sec. 14.45.030. Attendance and annual reports required. Teachers and others in charge of private or denominational schools shall make regular monthly attendance reports and annual reports to the commissioner of education in the same manner as teachers and superintendents in the public schools. (Sec. 37-11-3 AC LA 1949)

Chapter 47. Regulation of Educational Institutions. Repealed. (Sec. 5 ch 25 SLA 1976)

Legislative history report. — For report on ch. 190, SLA 1972 (CSHB 499 am), see 1972 House Journal, p. 744.

Sec. 44.25.036. Repayment of loans. Repayment of loans under AS 44.25.030 — 44.25.038 shall be on an annual basis with repayment commencing no later than 90 days after receipt of funds authorized to be appropriated from the Alaska Native Fund to the regional corporation under § 6(a) (1) (A), P.L. 92-203. (§ 1 ch 190 SLA 1972)

Sec. 44.25.038. Expiration of loan program. Because the purposes for which the loan program is created are limited, no loan may be made after five years from October 4, 1972. The program shall be inoperative 10 years from October 4, 1972. (§ 1 ch 190 SLA 1972)

Chapter 27. Department of Education.

Article

1. Board and Department of Education (§§ 44.27.010 — 44.27.020)
2. Alaska State Council on the Arts (§§ 44.27.040 — 44.27.060)
3. Alaska Historical Commission (§§ 44.27.061 — 44.27.076)

Article 1. Board and Department of Education.

Section

10. Board and commissioner of education
20. Duties of department

Sec. 44.27.010. Board and commissioner of education. There is at the head of the Department of Education a Board of Education. The commissioner of education is the principal executive officer of the department. (§ 11 ch 64 SLA 1959; am § 12 ch 96 SLA 1967)

Am. Jur. 2d references. — 63 Am. Jur. 2d, Public Officers and Employees, § 371; 68 Am. Jur. 2d, Schools, §§ 37 — 55; 72 Am. Jur. 2d, States, Territories and Dependencies, § 62.

Sec. 5

Sec. 44.27.020. Duties of department. The Department of Education shall

(1) administer the state's program of education at the elementary, secondary, and adult levels, including, but not limited to, programs of vocational education and training, vocational rehabilitation, library services, correspondence courses, adult basic education, and fire-service training, but not including degree programs of postsecondary education;

(2) administer the historical library;

(3) plan, finance and operate related school and educational activities and facilities. (§ 11 ch 64 SLA 1959; am § 77 ch 69 SLA 1970 am § 5 ch 86 SLA 1979)

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CHAPTER 60.
PRE-ELEMENTARY (EARLY
CHILDHOOD) SCHOOL

Section

- 10. Requirements
- 20. Exemption
- 30. Application for a certificate of approval
- 40. Denial of approval; hearing
- 50. Duration of approval
- 60. Display of certificate
- 70. Certificate of approval
- 80. Insurance
- 90. Records
- 100. Physical examination for children
- 110. (Repealed)
- 115. Staff
- 120. Recognition of special needs
- 130. Disaster plan
- 140. Facility inspections
- 150. Changes in major written policies, plans, programs
- 160. Nondiscrimination
- 170. Programmatic requirements of the pre-elementary schools
- 175. Transportation
- 180. Definitions

4 AAC 60.010. REQUIREMENTS. (a) Every person, institution or agency operating a school for children ages three through five years, when the school's primary function is educational, shall apply to the department for a certificate of approval.

(b) The educational component of all pre-elementary programs is under the general supervision of the department in cooperation with the Department of Health and Social Services. Those programs not approved by the Department of Education are supervised by the Department of Health and Social Services.

(c) Before admitting a child whose school expenses could be the responsibility of departments of state government, authorization of eligibility should be requested from the appropriate department by the school. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060
AS 14.35.080(4)

4 AAC 60.020. **EXEMPTIONS.** The following are exempt from 4 AAC 60.010:

(1) schools maintained by the United States or funded entirely with federal funds;

(2) courses of instruction on religious subjects given under the auspices of a religious organization, such as church schools, vacation Bible schools, or similar denominational programs;

(3) schools that enroll six children or less. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060

4 AAC 60.030. **APPLICATION FOR A CERTIFICATE OF APPROVAL.** (a) Application for a certificate of approval must be submitted on a form prescribed by the department.

(b) No pre-elementary school may represent that its program has a sponsorship, approval, characteristics, affiliation, or accreditation which it does not have, nor may any school cause a likelihood of confusion or misunderstanding as to any of these matters.

(c) Before issuing a certificate of approval, the department shall conduct an investigation of the applicant, including the proposed plan for the education and supervision of children and the mode of operation of the pre-elementary school. If the results of the investigation reveal that the primary purpose of the school is educational and that applicable regulations adopted by the department are satisfied, a regular certificate of approval shall be issued.

(d) The department may grant a conditional certificate of approval for programs with minor deficiencies correctable within a time specified on the permit, but not exceeding six months. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060

4 AAC 60.040. **DENIAL OF APPROVAL; HEARING.** (a) A school or program denied a certificate of approval by the department is entitled to a hearing before the state Board of Education at a regular meeting of the board if a

written appeal is received by the commissioner within 15 days of the date of denial of certification.

(b) The decision of the board on the appeal is final. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060

4 AAC 60.050. **DURATION OF APPROVAL.**

(a) A certificate of approval remains in effect for a period of no more than five years from date of issuance.

(b) A certificate may be revoked or suspended for failure to comply with the requirements of this chapter or other statutes and regulations governing the health, safety and welfare of students and employees.

(c) If the department has reasonable cause to believe that the holder of a certificate has failed to comply with this chapter or other applicable statutes and regulations, it may notify the holder of the basis for its belief and schedule a hearing on the matter to determine whether the certificate should be revoked or suspended. The commissioner shall appoint a hearing officer to preside over the hearing and to control its proceedings. The hearing shall be public, and all interested persons who have information relevant to the inquiry shall be permitted to be heard or to submit written statements and arguments, or both. A record shall be kept of the hearing.

(d) Following the hearing, the hearing officer shall prepare his findings and conclusions and recommend appropriate action to the commissioner. The commissioner shall review the hearing officer's recommendations and decide what, if any, action should be taken.

(e) A certificate holder whose certificate has been revoked or suspended by the commissioner may request, in writing and within 15 days of receiving notification of the commissioner's decision, that the board review that decision. A review will be made by the board or a committee of the board in the same manner as that provided in 4 AAC 60.040. The decision of the board is final. (Eff. 4/20/73,

Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060**4 AAC 60.060. DISPLAY OF CERTIFICATE.**

The certificate of approval must be displayed in a prominent place in the pre-elementary school. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060**4 AAC 60.070. CERTIFICATE OF APPROVAL.** The certificate of approval must include

- (1) name of pre-elementary school;
- (2) address of pre-elementary school;
- (3) maximum allowable number of children;
- (4) effective dates of certificate;
- (5) ages of children to be enrolled;
- (6) minimum number of staff members required to be in attendance while children are present. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060

4 AAC 60.080. INSURANCE. (a) Each nonpublic, pre-elementary school must have bodily injury liability insurance in an amount not less than \$100,000 per child, \$300,000 per accident, with a company authorized to do business in the State of Alaska. Policies must contain the following endorsement:

"In the event of cancellation of this policy, the company agrees to give 30 days' advance notice to the Department of Education, Pouch F, Juneau, Alaska 99811."

(b) If the insurance required under (a) of this section is allowed to lapse more than once in a 12-month period, the second policy lapse is grounds for termination of approval. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060**4 AAC 60.090. RECORDS.** The

pre-elementary school shall maintain an individual record for each pupil enrolled which must contain not less than the following:

(1) child's full name, birth date, and current address;

(2) name and address of parents or legal guardians;

(3) telephone numbers and instructions how the parents may be reached during school hours;

(4) names and addresses of persons authorized to take the child from school;

(5) a record indicating the immunization status of the child;

(6) a Cumulative Health Record Form. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060**4 AAC 60.100. PHYSICAL EXAMINATION FOR CHILDREN.** (a) Not more than three months before first entering school, each child

must have a tuberculosis skin test which meets the requirements of 7 AAC 27.213.

(b) Before first entering school, each child must have received the immunizations required by 4 AAC 06.055. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62; am 8/17/78, Reg. 67; am 9/24/82, Reg. 83)

Authority: AS 14.07.020(7) and (8)
AS 14.07.060
AS 14.30.070**4 AAC 60.110. PHYSICAL EXAMINATIONS FOR EMPLOYEES AND VOLUNTEERS.** Repealed 5/20/77.

4 AAC 60.115. STAFF. (a) All staff members must have a physical examination annually and not more than three months before initial employment in the pre-elementary school. This

physical examination must include proof of negative Tine test. It is the responsibility of the operator to maintain a personnel file for each employee in which the results of the current physical examination are kept. This file is subject to inspection by the department.

(b) All volunteers who work in the classroom or who provide direct services to children must present to the operator proof of a negative Tine test taken not more than three months before initial service. This test must be repeated annually.

(c) Schools subject to the provisions of this chapter shall comply with all applicable statutes and regulations concerning labor and employment practices. (Eff. 5/20/77, Reg. 62)

Authority: AS 14.07.020(7) and (8)
AS 14.07.060

4 AAC 60.120. RECOGNITION OF SPECIAL NEEDS. At the age of three years, an exceptional child may receive special assistance as a part of the local school district's annual plan of services for special education. Any pre-elementary school which provides services for an exceptional child and receives state funds for providing those services must adhere to state guidelines for special education programs. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060
AS 14.30.180

4 AAC 60.130. DISASTER PLAN. Each pre-elementary school shall develop a disaster plan which must include provisions for accountability for each child in the school until he is released to an appropriate authority. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(7) and (8)
AS 14.07.060

4 AAC 60.140. FACILITY INSPECTIONS. (a) Each pre-elementary school shall request an inspection by public safety and health agencies and shall conform to standards established by those agencies.

(b) Copies of documents indicating satisfactory compliance with health and safety standards must be filed with the department before the issuance of a certificate of approval.

(Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(7) and (8)
AS 14.07.060

4 AAC 60.150. CHANGES IN MAJOR WRITTEN POLICIES, PLANS, PROGRAMS.

Major changes in written policies, plans, programs and other information included in the initial application must be transmitted to the department within 30 days following implementation of the change. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060

4 AAC 60.160. NONDISCRIMINATION. No pre-elementary school will be approved unless it adopts a policy of nondiscrimination in respect to race, sex, creed, color or religion with the following exceptions:

(1) a pre-elementary school established for an identified group (e.g., physical-mental handicaps) may serve that group only but otherwise may not discriminate;

(2) a religious group may elect to serve children that adhere to its religious beliefs but otherwise may not discriminate. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060

4 AAC 60.170. PROGRAMMATIC REQUIREMENTS OF THE PRE-ELEMENTARY SCHOOLS.

(a) The pre-elementary school shall provide the following information, in writing, to the department: the philosophy of education; the goals and objectives of the school; the program model and teaching techniques used in achieving the stated goals and objectives; daily educational activities schedule including provisions for individual activities, small group activities and large group activities; the number and ages of the children to be served along with the number of staff members working with the children; provisions for parental involvement; a copy of all public advertisements regarding the school; a copy of the personnel and administrative rules of the school; and a copy of all administrative forms used by the school.

(b) A pre-elementary school must have

sufficient staff to provide for each child's physical care and to offer individual attention to children as it may be needed as well as time to interact with children for the benefit of their conceptual and language growth. The number of staff and their utilization should reflect programmatic requirements, differences in the needs of the children served and should permit flexible groupings.

(c) There must be at least two staff members, one of whom may be a teacher-aide, present in each building. They must be stationed in sufficient proximity to be of aid in emergency situations.

(d) The operator shall provide a written training plan for each staff member who serves in the capacity of teacher, teacher-aide or assistant teacher. This plan must include provisions for preservice and inservice training and must indicate frequency as well as content. All such training is subject to the approval of the department.

(e) The department shall investigate to determine whether the programmatic objectives of the school are being met. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060

4 AAC 60.175. TRANSPORTATION. An adult must be designated to accompany the driver and provide for pupil safety when more than six pupils are transported in a vehicle. (Eff. 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060

4 AAC 60.180. DEFINITIONS. Unless the context indicates otherwise, in this chapter

(1) "department" means the Department of Education;

(2) "board" means the state Board of Education;

(3) "commissioner" means the Commissioner of Education;

(4) "pre-elementary school" means a school for children ages three through five years whose primary function is educational;

(5) "certificate of approval" means a regular certificate issued to an operator of a pre-elementary school who has met the minimum requirements of this chapter;

(6) "operator" means the person legally responsible for the pre-elementary school;

(7) repealed (Eff. 5/20/77, Reg. 62);

(8) "staff member" means anyone who provides direct services to children in the classroom and may be any of the following:

(A) a person 19 years or over who is salaried;

(B) classroom volunteers who are at least 19 years of age;

(C) student aides who are enrolled in a training program who are at least 16 years of age;

(9) repealed (Eff. 5/20/77, Reg. 62). (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HB - 357
 Title: ...regulation of religious schools
 Sponsor: Fritz
 Requestor: House HESS

II. FISCAL DETAIL

Agency Affected: Education
 Program Category Affected: Elem. & Sec.
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Steve Hole Phone: 465-865
 Division: Management, Law, & Finance Date: 4/13/83
 Approved by Commissioner Marshall Lind Date: 4/18/83
 Department: Education

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

3/8/83

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907-465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 14, 1983

SUBJECT: Regulation of religious schools
(CSHB 357 (HESS))

TO: Representative Milo Fritz
Chairman, Health, Education, and
Social Services Committee

FROM: Keith B. Levy *KBL*
Legislative Counsel

Enclosed is a copy of CSHB 357 (HESS), relating to the regulation of religious schools. The bill raises a number of constitutional questions. Because these constitutional requirements must be balanced against one another, there is virtually no way to guarantee that the bill is valid. In my opinion, however, the bill does a good job of balancing the constitutional requirements and is probably not unconstitutional.

In regulating religious schools, the state must consider the "free exercise" and "establishment" clauses of the state and federal constitutions. These provisions essentially prohibit the state from unduly burdening the free exercise of religion and from becoming so involved in the regulation of religious schools as to encourage or inhibit religious activity. On the other hand, the "equal protection" clauses of the state and federal constitutions require the state to justify treating religious schools differently from other private schools. Moreover, while the state may not excessively regulate religious schools, it also has an obligation to provide a reasonable education to school age children. Reconciling these different interests with one another is no easy task and it is difficult to predict which of these will take precedence in the courts.

CSHB 357 (HESS) exempts certain religious schools from all state laws and regulations relating to education except laws concerned with health, fire safety, sanitation, immunization, and physical examinations if the schools agree to comply

Representative Milo Fritz

Page 2

May 14, 1983

with certain minimal statutory requirements. The schools affected by the bill are those that are operated by a church or other religious organization that is exempt from federal taxation and do not receive state or federal funding (AS 14.45.040). Children attending these schools are exempt from the state's compulsory attendance law (AS 14.30.010). The schools that opt to comply with the minimal statutory requirements must maintain attendance and enrollment records (AS 14.45.030(b)), notify the public school superintendent if a child is no longer enrolled or attending (AS 14.45.-030(b)), administer a nationally standardized test to be selected by the individual schools that measures English grammar, reading, spelling, and mathematics (AS 14.45.035), and operate on a regular nine month schedule (AS 14.45.-030(c)). Parents of children attending these schools must file enrollment and attendance records with the local public school superintendent (AS 14.45.030(b)). Religious schools that choose not to comply with these standards remain subject to the same regulations as all other private schools.

The First Amendment to the United States Constitution and Article I, section 4 of the Constitution of the State of Alaska provide

No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.

The free exercise clause has been interpreted to mean that the state may not unduly burden the right of a parent, child, or church to freely exercise a particular religion, unless the state can show a compelling state interest. Sherbert v. Verner, 374 U.S. 398 (1968). Even when the state can show a compelling interest in regulating religious schools, it must also show that the regulation is by the least burdensome means.

CSHB 357 (HESS) allows the state to regulate health and safety standards, to require certain standardized tests, and to assure regular attendance by the children. None of these requirements appears to be unduly burdensome on the free exercise of religion. The state clearly has a compelling interest in maintaining health and safety standards and these standards, if reasonable, generally have no connection to the exercise of religion. The interest justifying the standardized test requirement is the state's obligation to provide an education for children. The requirement is not unduly burdensome because the individual schools are

permitted to select the test of their choice provided that the test measures achievement in certain basic areas. Beyond that, the bill does not regulate curriculum in the religious schools. Finally, the bill requires certain attendance reports from the schools and the parents of children attending them. Again, the reporting requirements are minimal and are justified by the state's interest in assuring that the children are receiving an education. Accordingly, the bill probably does not infringe on the right to the free exercise of religion.

The analysis of the bill under the establishment clause is similar to that under the free exercise clause. Legislation must be substantially neutral toward religion. Epperson v. Arkansas, 393 U.S. 97 (1968). Excessive entanglement in the regulation of religious organizations is not permitted. Lemon v. Kurtzman, 403 U.S. 602 (1971).

The bill minimizes the state's involvement in regulating religious schools by exempting them from the state's general education regulations if the schools agree to comply with certain minimal standards. Of these standards, the only one that might present a problem by excessively involving the state in the regulation of religion is the attendance reporting requirement. In Surinach v. Pesquera de Busquets, 604 F.2d 73 (1st Cir. 1979), the court found state requirements that religious schools release extensive financial and other data unconstitutional. The statute challenged in that case can be distinguished from CSHB 357 (HESS), however, because the bill only requires attendance reports, the reports must be released by the parents, and they can be justified by the state's obligation to ensure that children receive an education. The attendance reports are probably not an excessive entanglement by the state in the regulation of religious schools.

The equal protection clauses of the Fourteenth Amendment of the United States Constitution and Article I, section 1 of the Constitution of the State of Alaska require the state to justify the statutory creation of a class based on religion. The classification

. . . must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

Isakson v. Rickey, 550 P.2d 359, 363 (Alaska 1976).
CSHB 357 (HESS) creates a class of religious schools which are exempt from most state regulations that apply to other private schools. Since the exemptions are substantially tied to the free exercise of religion, however, they can be justified on the basis that there is a substantial relationship between the exemptions and the goal of the legislation. Only if the exemptions were not tied to the exercise of religion or some other valid governmental purpose would the bill violate the equal protection clause.

The bill's deregulation of religious schools may raise a problem with respect to the state's obligation to provide an education to all children in the state. It is not clear, however, that this obligation is mandated by the constitution. Article VII, section 1 of the Constitution of the State of Alaska provides, in part,

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions.

It is not clear whether this provision merely obliges the state to provide the opportunity for an education to all children of the state, or if it includes the obligation to ensure that they actually receive an education. If the latter is true, then the state would be restricted in the degree to which it may deregulate religious schools. Even if that is the case, however, CSHB 357 (HESS) probably does impose sufficient requirements on the religious schools to ensure a minimal level of quality of education. Thus, the bill probably does not violate any obligation the state has to provide an education to children in the state.

In conclusion, CSHB 357 (HESS) is probably constitutional although the necessary balancing of constitutional requirements makes it difficult to be certain of this. Ideally, legislation regulating religious schools will place minimal burdens on the schools and require minimal state involvement while requiring the schools to meet minimal educational requirements to ensure that the children are receiving an education. In my opinion, the bill successfully strikes this balance.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

May 13, 1983

MEMORANDUM

TO: Representative Sam Pestinger

FROM: Leslie Longenbaugh *LL*
Research Staff

RE: Other States' Regulation of Religious Schools
Research Request 83-159

Ed Essa of your staff asked that we provide information about states that regulate religious and other nonpublic schools differently. My preliminary work, provided to you on May 4, revealed five states that exempt religious schools from some state regulation to which other nonpublic schools are subject. Upon further investigation, I found significant differences in regulation in only three states: Maryland, North Carolina and Tennessee. Below is a brief description of the statutory distinctions made by each state; I have attached copies of the pertinent state statutes.

Maryland

Maryland requires that private "noncollegiate" schools obtain a state certificate of approval before they may operate in the state. The issuance of such a certificate of approval is contingent upon the state board of education's finding that the "facilities, conditions of entrance and scholarship, and educational qualifications and standards are adequate and appropriate" for the type of school.¹

Specifically exempted from the requirement of a certificate of approval are all institutions "operated by a bona fide church organization..."² Schools that come under this exemption may not receive any state funds other than funds for the state food service program.

All private noncollegiate schools in Maryland, including the religious schools that are exempt from the certificate of approval, must make annual reports of their enrollment and courses of study.³ In addition,

¹ Annotated Code of Maryland, Education § 2-206 (e)(2).

² ACN § 2-206 (3)(4).

³ ACN § 2-205.

NEA - ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

Jean Krause, President

JUNEAU OFFICE
147 S. FRANKLIN, #207
JUNEAU, ALASKA 99801
PHONE (907) 586-3333

ANCHORAGE REGIONAL OFFICE
1411 WEST 35th
ANCHORAGE, ALASKA 99503
PHONE (907) 273-3333

FAIRBANKS REGIONAL OFFICE
405 COLLEGE ROAD
FAIRBANKS, ALASKA 99701
PHONE (907) 479-3333

Gen. Office
Pres. President
Rm. 1024
Kenai, Alaska 99511

May 12, 1983

Gayle Pierce
President Elect
SB Box 51377
Fairbanks, Alaska 99701

TO: House HESS Committee

FROM: NEA-Alaska

Bill Potter
NEA State Director
177 Behrens Avenue
Juneau, Alaska 99801

RE: HB 357

Bob McGiggor
Region I Director
Box 1042
Sitka, Alaska 99825

NEA-Alaska members wanted to participate in this teleconference for HB 357; but, because of the timing of the teleconference to fall during the peak hours of the school day, in every region of Alaska, they find themselves unable to testify. Therefore, on behalf of over 6,000 teachers NEA-Alaska submits this written testimony in opposition to HB 357 "An Act relating to the regulation of religious schools".

William Conde
Region II Director
1441 E. 1st Ave.
Anchorage, Alaska 99501

Our opposition is premised both on constitutional and educational grounds.

Richard Wood
Region III Director
P.O. Box 100
Garden Valley, Alaska 99547

The State of Alaska is not and cannot be concerned with instruction in sectarian, religious matters; but in non-sectarian disciplines such as mathematics, science, English, history, civics, physical and vocational education, etc. the state is and must be concerned. The Alaska State Constitution in Article I, Section I, "Inherent Rights", states:

Frank Parker
Region III Director
P.O. Box 100
Garden Valley, Alaska 99547

"SECTION 1. This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State."

Jean Robin
Region IV Director
P.O. Box 100
Garden Valley, Alaska 99547

HB 357 removes all oversight and regulation by the State for those educational programs offered by religious institutions who do not receive federal or state funds. In doing so, HB 357 forces the State to abdicate its responsibility in the education, health and social services of youngsters enrolled in religious schools. The State of Alaska will not be able to ensure that religious school students are enjoying equal rights, opportunities and protections under the law:

Ray Webb
Region IV Director
10000 Marston
Anchorage, Alaska 99507

Paul Thomas
Region V Director
P.O. Box 100
Garden Valley, Alaska 99547

Bill Abney
Region VI Director
P.O. Box 581
Anchorage, Alaska 99507

Leo Wilson
Region VI Director
8410 Pioneer Drive
Anchorage, Alaska 99507

Lon Sears
Region VI Director
SFA Box 581B
Anchorage, Alaska 99507

Paul Stout
Region VI Director
6200 E. 14th Avenue
Anchorage, Alaska 99504

Frank Holmes
Director at Large
Box 100
Garden Valley, Alaska 99547

Section 14.45.030 as amended denies the State the power to receive and examine reports about the educational programs offered in religious schools;

Section 6. AS 14.45.030 Sentence addition to paragraph (c).

Such schools shall report annually the number of students enrolled in each grade and provide a copy of the school calendar to the department.

Such schools shall maintain adequate student records, including all information required of public schools on ^{attendance} immunization, physical examinations, testing and courses taken while in attendance at the religious school. (same as public school)

-direct difference - calendar & enrollment only -

This - adequate information if the youngest withdraws from the religious school want it available for public schools.

Milo & Mac -

5/18/10am

Just had a call from Ed Essa of
Pestinger's office. He wanted you
to know that But Carney is not
very happy with the amendment made
to Sec 1 of the religious school bill.

The H&M Committee insisted the exclusion
of "educational component of pre-elementary
schools and ~~and~~ nurseries operated by a church..."

He (Carney) is going to attempt to amend
this out on the House floor & wants
your support.

He feels that this defeats the purpose of
the bill. ~~They~~

Jinda

Alaska State Legislature

AD 551

REP. MAE TISCHER
CO-CHAIRMAN

REP. MILO FRITZ
CO-CHAIRMAN



MEMBERS:
REP. MIKE MILLER
VICE CHAIRMAN
REP. BETTE CATO
REP. MIKE DAVIS
REP. PETER GOLL
REP. NILO KOPONEN

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

House of Representatives
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

April 20, 1983

Ms. Pat Lines
Education Commission of the States
Suite 300
Lincoln Tower Bldg.
1860 Lincoln St.
Denver Colorado 80203

mt

Dear Ms. Lines:

In appreciation for the information you were able to extend to me in our telephone conversation earlier today, I would like to thank you for your time and efforts in forwarding any further background in regard to the issue concerning the exempting of religious schools from State government.

The enclosed bill has been proposed to the Alaska State Legislature and is currently being reviewed by the Health, Education and Social Services Committee. This language, however, has been declared unconstitutional through a legal opinion from our Legal Services Division attorney, Keith Levy (attached).

Any further assistance you are able to offer will be appreciated. We will be scheduling the legislation for hearings in the very near future.

Respectfully,

Linda Otey, Committee Aide
House HESS Committee

cc: Rep. Milo Fritz, Co-Chair HESS ✓
Rep. Mae Tischer, Co-Chair HESS

enclosures

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

HES

file in
w/ HB 357

MT

MEMORANDUM

April 18, 1983

SUBJECT: Regulation of religious schools
(HB 357)

TO: Representative Milo Fritz

FROM: Keith B. Levy *KBL*
Legislative Counsel

RECEIVED
MILO H. FRITZ, M.D.
MAR 10 5 11 PM '83

You have requested a sectional analysis of HB 357, an Act relating to the regulation of religious schools. In general, the bill amends certain sections of Title 14 of the Alaska Statutes to remove state control of schools operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding for its educational program.

Section 1 of the bill amends AS 14.07.020(8) to remove pre-elementary schools and the educational component of nurseries operated by these religious groups from the supervision of the Department of Education. The law currently requires the Department of Education to supervise these programs.

Section 2 of the bill amends AS 14.30.010(b)(1) to exempt children attending a school operated by one of the religious organizations described above from the requirement that children between seven and 16 years of age attend public school. It also makes clear that these schools need not have an average student proficiency that is at least equal to the average proficiency found in public schools in the same area. AS 14.30.010(b)(1) currently requires such proficiency of all private schools.

Section 3 excludes the schools described above from the provisions of AS 14.45.020. As presently written, AS 14.45.020 allows the commissioner of education to furnish final examination questions and grant diplomas for eighth graders in private schools.

April 18, 1983

Section 4 amends AS 14.45.030 to exempt the schools described above from monthly attendance and other reporting requirements currently applied to public and private schools.

Section 5 amends AS 44.27.020(1) to exclude the schools described above from the general duty of the Department of Education to administer the state's program of education.

You should be aware that HB 357, as currently written, presents a constitutional problem with respect to the equal protection clauses of the state and federal constitutions. The bill exempts certain private schools from requirements that apply to all other private schools. The factors that distinguish the exempt schools from the nonexempt schools are their federal taxation exemption status, that the educational programs involved do not receive state or federal funding, and that they are operated by a church or other nonprofit religious organization.

The equal protection clause of the Constitution of the State of Alaska (Article I, section 1) has been interpreted to mean that legislative classifications

...must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

Isakson v. Rickey, 550 P.2d 359, 363 (Alaska 1976). Accordingly, the distinguishing factors mentioned above must meet this test if HB 357 is to survive a constitutional attack. Although some of the distinguishing factors do meet the test, at least one probably does not.

Singling out schools which do not receive state or federal funds for exemption from certain state requirements probably has a fair and substantial relationship to the goals of the legislation in the sense that the state has less of an interest in controlling such schools. The same may be true of schools with nonprofit status under federal taxation laws. However, a provision which singles out a school merely because it is operated by a church or other religious organization is subject to greater scrutiny. The legislature may be called upon to justify treating a private, nonprofit school which does not receive state or

Representative Milo Fritz

Page 3

April 18, 1983

federal funding in a different manner than a private, nonprofit school which does not receive federal funding and is operated by a church or other religious organization. The only difference between the two classes of schools is that one is run by a religious group and the other is not. To justify such a distinction, the legislature would have to show a very substantial relationship between the distinction and the goals of the legislation. Moreover, the goals of the legislation must be constitutionally legitimate. In my opinion, the classifications created by HB 357 lack this level of justification to the extent that they are based solely on religion. For this reason, the bill is probably unconstitutional.

KBL:ljb

15/009

Alaska State Legislature



IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4949

BOX 142
EAGLE RIVER, ALASKA
99577

Representative Randy Phillips

HOUSE DISTRICT 15

MEMORANDUM

TO: Senator Joe Josephson
Chairman, Senate HESS Committee

FROM: Representative Randy Phillips *R.E.P.*

DATE: May 25, 1983

RE: CS HB 357 (RLS)

During the House floor debate on the captioned bill, Representative Koponen and I offered the attached amendments for consideration. These amendments failed the House.

The amendments were offered so that this bill would apply equally to all nonprofit private schools (to include religious schools). I have some real concern that the bill as is presently drafted could open the door to some lawsuits concerning the constitutionality of singling out religious schools for special treatment. It was my feeling that by extending the provisions to all nonprofit private schools, this problem could be avoided.

I would appreciate it if you and your committee would take the attached amendments into consideration when you review this legislation.

If you have any questions, please do not hesitate to contact me.

RECEIVED

MAY 26 1983

Josephson,

OFFERED IN THE HOUSE:

BY: Koponen and Phillips

To: CS HOUSE BILL No. 357 (RULES)

SENATE BILL No. _____

PAGE: _____ LINE: _____

PAGE 1, LINE 6

Delete: "religious"

Insert: "private"

PAGE 1, LINE 14, following "by a"

Delete: "church or other nonprofit religious"

Insert: "private nonprofit"

PAGE 2, LINE 6, following "by a "

Delete: "church or other nonprofit religious"

Insert: "private nonprofit"

PAGE 2, LINE 10, following "A"

Delete: "religious"

Insert: "private nonprofit"

PAGE 2, LINE 23, following "in a"

Delete: "religious"

Insert: "private nonprofit"

PAGE 2, LINE 25, following "in the"

Delete: "religious"

Insert: "private nonprofit"

PAGE 2, LINE 29, before "school"

delete: "religious"

insert: "private nonprofit"

A M E N D M E N T #1 (continued)

OFFERED IN THE HOUSE:

By: _____

To: _____ HOUSE BILL No. _____

SENATE BILL No. _____

PAGE: _____

LINE: _____

PAGE 3, LINE 1, following "The"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 3, following "the"

Delete: "religiuous"

Insert: "private nonprofit"

PAGE 3, LINE 4, following "a"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 12, before "school"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 14, following "the"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 18, following "A"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 22, following "A"

Delete: "religious"

Insert: "private nonprofit"

OFFERED IN THE HOUSE:

BY: _____

To: _____ HOUSE BILL No. _____

SENATE BILL No. _____

PAGE: _____

LINE: _____

PAGE 3, LINE 25, following "the"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 26, following "chapter"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 27, following "by a "

Delete: "church or other nonprofit religious"

Insert: "private nonprofit"

PAGE 4, LINE 8, following "by a"

Delete: "church or other nonprofit religious"

Insert: "private nonprofit"

A M E N D M E N T #2

OFFERED IN THE HOUSE:

BY: KOPONEN AND PHILLIPS

To: CS HOUSE BILL No. 357 (RULES)

SENATE BILL No. _____

PAGE: _____

LINE: _____

PAGE 1, LINE 15

Delete: "direct"

PAGE 2, LINE 8

Delete: "direct"

PAGE 3, LINE 29

Delete: "direct"

PAGE 4, LINE 10

Delete: "direct"

HB 357 TITLE & SPONSOR SUMMARY
AMENDED TITLE:
AN ACT RELATING TO THE REGULATION OF RELIGIOUS SCHOOLS

12:30 5/21/83 PAGE 1 OF 2

PRIME SPONSOR: FRITZ.
CO-SPONSORS: TISCHER, PESTINGER, FURNACE, WARD, FLOOD.
CURRENT STATUS: 5/19/83 IN (H) RULES

HB 357 HOUSE ACTION 12:31 5/21/83 PAGE 2 OF 2
DATE SEQ PAGE LEGISLATIVE ACTION

04/14/83	01	0861	FIRST READING --- COMMITTEE REPORTS
05/19/83	02	1426	HESS -- CS05
05/19/83	03	1427	HESS F/NOTE EQUALS ZERO RULES

*** ** ** *** ** *

PUBLIC SERVICE ANNOUNCEMENT

5/4/83

STATEWIDE TELECONFERENCE

May 13, 1p.m. until 2:30 p.m. PST

Subject: HB 357 "An Act relating to the regulation of religious schools".

Contact: Linda Otey, HESS Committee Aide

FOR IMMEDIATE RELEASE

The House HESS Committee will be inviting the Senate HESS Committee to join them in a statewide teleconference regarding HB 357 "An Act relating to the regulation of religious schools. The teleconference will be held at 1p.m. on May 13, (PST) and will end at 2:30p.m. PST. The meeting will be held in Juneau in Court Room A of the Court Building. It would be appreciated, in the essence of time, if those wishing to testify would coordinate their testimonies to specific subject areas addressed by this legislation so as not to create a repetitious testimony that might not allow all witnesses to testify due to time constraints. Written comments may also be submitted to the House HESS Committee, Pouch V, Juneau, Alaska 99801.

Alaska State Legislature

REP. MAE TISCHER
CO-CHAIRMAN

REP. MILO FRITZ
CO-CHAIRMAN



MEMBERS:
REP. MIKE MILLER
VICE CHAIRMAN
REP. BETTE CATO
REP. MIKE DAVIS
REP. PETER GOLL
REP. NIILLO KOPONEN

House of Representatives

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

April 22, 1983

Pastor Paul Glover
Harvestor Christian Church
and Academy
9101 Brayton Drive
Anchorage, Alaska 99507

Dear Pastor Glover:

Enclosed is a copy of a legal opinion regarding HB 357, the religious school legislation. The opinion has been concluded based on the legislation as written in its original form.

We are in the process of researching the relationship of religious, non-profit and private schools to other states and how best to draft legislation keeping with the intent and, at the same time, standing the test of constitutionality.

I will be happy to keep you informed as to the status of the legislation.

Sincerely,

A handwritten signature in cursive script that reads "Linda Otey".

Linda Otey
Committee Aide
House HESS Committee

cc: Representative Milo Fritz, Co-chairman
Representative Mae Tischer, Co-chairman

Testimony of Burton Carney
Associate Pastor and Principal of
Harvester Christian Church and Academy
Anchorage, Alaska
November 29, 1982

Regarding
New Regulations Being Proposed By
Alaska Department of Education
For
Pre-Elementary School Programs

1). Remarks regarding the Task Force that prepared this proposal.

Dr. Marshall Lind's Response to the Draft Report dated February 2, 1982, specifically states, "The Task Force will be made up of persons from the state who are knowledgeable in the area of preschool education and who represent the various groups who will be impacted by the plan for managing preschool programs."

Although churches have a sizeable number of the pre-elementary programs in this state, no individuals were chosen from this impacted group to serve on the Task Force that wrote this proposal. Some of the major flaws of this proposal can be traced to the absence of these people from the Task Force.

2). 4 AAC 60.019 (Draft page 3) CERTIFICATE REQUIRED

The first amendment to the U. S. Constitution plainly says, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;" It is a clear violation of the principle of the separation of church and state for DOE regulations to require that a ministry of our church be LICENSED by the government. This interferes with the "free exercise" of our religion.

This proposal must be rewritten. No licensure or regulations that interfere with the "free exercise of religion" can be accepted or obeyed.

Some say that this proposal is for the "protection" of young children. I would point out that it is the conviction of our church that our buildings and equipment meet reasonable regulations for fire, life safety, health, and sanitation when they are equally and fairly applied to all. Regulations already exist that protect the health and safety of children without requiring that a church's ministry be licensed.

Portions of the proposal to which I strongly object as violations of the First Amendment include the need for a certificate (LICENSE), inspection of church personnel, finances, records, and church program/curriculum.

3). 4 AAC 60.019 (Draft p. 3) EXEMPTIONS

This section needs additional exemptions added.

Add a #3 that reads, "SCHOOLS WITH ELEMENTARY PROGRAMS."

Telephone conversations with the DOE have indicated that this new proposal would not be applied to schools such as Harvester or Tom Thumb Montessori, etc. because they already have a school program for children age six and up. When asked where this exemption was in the code in writing, we were told that it was an "understanding within the department." This is NOT good enough. Exempting "schools with elementary programs" would mean that those schools would not have to try to comply with two sets of different regulations within the same facility. Why should children of age five be regulated in a markedly different manner than children of age six? (Teacher/pupil ratios, square footage per child, hot lunch, etc.)

Add a #4 that reads, "SCHOOLS OPERATED BY LOCAL CHURCHES UNDER THEIR OWN BOARD."

This wording would give proper recognition to the exemption from licensure already granted by the constitution. The DOE must not interfere with the ministries of churches. Jesus Christ never said, "Suffer (allow) the little children to come unto me after you have a government license on the wall." God, not state government, calls and ordains these ministries to serve the community!

I wish to publicly state that as the Associate Pastor of Harvester Christian Church and Academy and as the Principal of our Christian school ministry, that I will NOT apply for a license from the DOE. It would be a violation of my religious convictions to do so!

Examples of discrimination against our church if this proposal is adopted in its present form include:

- A. Requiring Christian pre-elementary programs to get a license to minister to the needs of children.
4 AAC 60.019 (Draft page 3)
- B. Threatening to close down a sacred ministry if we as a church do not bow to governmental control and interference.
4 AAC 60.041 (Draft page 4)
- C. Government agencies should not be allowed to have total access to church and Christian school records. This violates the privacy of the church and of the parents.
4 AAC 60.049 (b) which refers to "records" should be modified to say "medical records," etc. to properly limit government intrusion. (Draft page 5).
- D. The government has no right nor authority to dictate to churches the staff qualifications for their Christian pre-elementary programs. 4 AAC 60.088 & 4 AAC 60.099 (Draft pages 9 and 10)

E. The state must not be permitted to review, change, or dictate curriculum and program to churches. As presently worded, this proposal intrudes into the internal affairs of a church. 4 AAC 60.189 (Draft pages 16 and 17)

4). A number of the provisions of this proposal would INCREASE the cost of tuition for schooling. This would effectively DENY nursery school and kindergarten to the children less able to afford these beneficial programs.

Examples of MINIMUM standards that are not realistic for non-subsidized programs include:

- A. Unrealistic space requirements of 35 sq. ft./child. Minimum requirements for children in grades 1-12 are 20 sq. ft./child. Why almost double the space for a five year old child when compared to the space required for a six year old child? 4 AAC 60.119 (Draft page 12)
- B. Staff/student ratio of 1/8 for three and four year olds and a 1/10 ratio for five year olds. This certainly does not represent the MINIMUM standards for reasonable supervision and instruction. 4 AAC 60.109 (Draft p. 11)
- C. Schools should not be required to supply hot lunches to pre-elementary students. Parents should have the right to decide what they want done about lunches. Many church school programs have no hot lunch program now. To begin one would cost a great deal of money for some groups. 4 AAC 60.169 (Draft page 15)

Some may be tempted to say at this point, "You should be able to meet these requirements because day care centers already do." Yes, but the parents don't have to pay for a lot of the overhead costs because of government money that subsidizes the center.

Examples:

- A. Any day-care center can apply for a \$50,000 government loan at 7% interest to improve their center or help their center meet regulations or revised regulations.
- B. A lady at the local Day-care Assistance Office estimated that between 50 to 65% of the children in Anchorage day-care centers had subsidized tuitions. If a family has take-home pay of \$1,075 or less, the entire tuition (\$12/day) is paid for by the government. An individual or family can earn up to \$1,975 p/m. before the subsidies quit. This would amount up to \$240.00 for the month of November for 100% subsidy.
- C. Day-care centers receive surplus food products or cash to help with their snacks and noon meal. The amount per child can be as high as 52¢ for snacks and \$1.86 for their noon meal. This adds up to another \$50.00 per month to the center.

With all this government money, it's easy to see how day-care centers can make ends "meet" and still abide by so-called MINIMUM standards. Already they are planning to ask this next legislature for increased subsidies.

What's the point? Many of the groups that are opposed to this DOE proposal are non-profit organizations and by conviction do NOT receive government funds. We simply cannot operate like most day-care centers operate. The government will not help us meet these MINIMUM standards, our parents will have to help us by paying HIGHER tuitions. The sad part is that a number of children will end up being denied service because their families can't afford a tuition increase. I think that it is time for the Task Force to think about how families are going to pay for Utopian standards!

5). Some provisions of this proposal invade privacy and parental rights.

Examples:

A. The requirement that the school report a parent to the Department of Health and Social Services if the parent is over one hour late to pick up his child is unwarranted. No parent wants to be listed in some social worker's case file! 4 AAC 60.079 (h) (Draft page 9)

B. Why did the ANCHORAGE TIMES on Friday, Nov. 26th. headline an article in favor of the proposal, "CORPORAL PUNISHMENT OUTLAWED"? Because some of those writing this proposal really believe that it is wrong to paddle a child. They call that child abuse. Oh, it was later qualified in the article and is in this proposal that written authorization for spanking is permitted. But what about this wording?

Re: discipline - "...and that they not use any other technique which is humiliating, cruel, shaming, frightening, or otherwise damaging to the child." I ask, BY WHOSE STANDARDS? 4 AAC 60.189 (7) (Draft page 17)

6). This proposal neglects to include an important sentence in the DISCRIMINATION section -- 4 AAC 60.069 (3) (Draft page 7).

Present regulations contain the sentence,

"A religious group may elect to serve children that adhere to its religious beliefs but otherwise may not discriminate."

This recognizes the right of a church to serve those that are supportive of its programs. This deleted sentence MUST BE ADDED to the rewrite of this proposal.

IN SUMMARY. The most dangerous part of this proposal is the licensure of Christian church programs to young children. This must be changed to be acceptable. Cost factors have not been considered in light of what people are going to have to pay to meet these requirements. Some gross violations of privacy and parental rights need to be remedied.

Thank you.

Burton Carney
Burton Carney

YOUR CHURCH'S DEFENSE: Free Exercise and/or Entanglement

by Earl Little

TO WHAT DEGREE SHOULD THE GOVERNMENT CONTROL A CHURCH MINISTRY? DOES THE STATE HAVE THE RIGHT TO ENTANGLE ITSELF WITH THE EDUCATIONAL MINISTRY OF A CHURCH?

Churches across America are coming under attack . . . yet as they go to the courtroom, many understand little about the deep meanings behind their choice of a defense. Pastors must not allow attorneys to put words in their mouths . . . present more easily defended arguments that compromise only a small part of their faith . . . place the priority of winning above the command to stand . . . twist the faith ever so slightly so as to appear more reasonable before the court . . . abandon five percent of their convictions to increase the chances of a courtroom victory by seventy-five percent . . . dip the colors with the justification that "half a loaf is better than no loaf at all" . . . cut the lines and allow the loser to sink, even though he is right, rather than risking his pulling them under . . . replace absolute Biblical truth as the basis for their position with the expediency of conformity to U.S. Supreme Court decisions.

Miller Road Baptist Church stood sued . . . as pastor, I was sued — two counts against the church and me, operating a school and day care without a license since November of 1979. The minimum fine was \$100 per day, with a maximum fine of \$2,000 per day. I could have gone to jail charged with violating the same Texas law that has put Brother Lester Roloff in jail three times. Such charges brought me no small amount of soul searching. I knew we had a much better chance to win by arguing not only "free exercise," but also "entanglement," yet my faith would not permit me to allow the lawyers to argue "entanglement." This decision involved principles from God's Word. I would rather lose than violate those principles. Many other pastors share my convictions on these matters and refuse to allow the Christian Law

Association attorneys or any attorneys to violate their faith by arguing contrary to what they believe, even though it is more likely to win.

CLA carefully explains to churches which it represents in lawsuits the possible avenues of defense. When fundamentalist pastors fully understand the basis of arguing "entanglement," many respond that to so argue would violate their faith in such areas as licensure, taxation, compulsory attendance, minimum standards for church school education, and zoning.

The basis of arguing "entanglement" is one of **degree**. In order to argue that the government is "entangled" with



Earl Little, Pastor, Miller Road Baptist Church, Garland, Texas

your religion (too great of a degree), one has to admit that the government has a right to come in a little but has come in too far. In other words, the camel has a right to put his head in the tent, but has no right to come any further into the tent.

A good illustration would be—how far is too far to go with my wife. Someone reasons, "I promise you that I'll go no farther than holding her hand." My immediate reply would be a clinched fist, "Hands off!" This matter is not open to negotiation or discussion. Even to talk about such a thing makes adrenaline shoot through my body with muscles

tightening. Our church is the Bride of Jesus Christ. Matters of faith are not negotiable. Compromise is not considered. "Absolutely, keep your hands off her!" is my watchword to the government. I will not consider for a moment how far is too far. In such matters I am a purist — a Biblicist.

A classic example of a compulsory attendance case argued from the standpoint of entanglement is **State of Ohio v. Whisner**. Brother Levi Whisner is one of my heroes. As a pastor, he saw this thing sooner and stood straighter than perhaps any other pastor. He exercised amazing God-given wisdom when practically no one saw the issue clearly. Levi's faith was the turning point of Attorney David Gibbs' life. While Levi Whisner faced the lions, most of us cowered in the corner displaying our licenses. For years I spoke of the **Whisner** decision as a great victory. Recently I read the Ohio Supreme Court decision and realized the victory we received was in Brother Whisner's life, not in the Court's decision. God has used his life to change so many of us, but the case has set terrible precedent and will lead to a new series of lawsuits in Ohio.

The Biblical position regarding compulsory attendance laws is that the responsibility to train children rests entirely with the parents (Deuteronomy 6:4-6; Proverbs 22:6; Galatians 6:4; Malachi 4:6; Psalms 78:4-7). The Apostle Paul alludes to this uncontested principle in Galatians 4:1, 2 referring to children being under tutors and governors until the time appointed by the father. A father should determine at what age the pedagogy of his child has reached fruition. Nowhere in Scripture is education a responsibility of the State.

In **Whisner**, this Biblical principle is avoided under the compromising banner of "entanglement," which is far more reasonable to the State as well as to many judges. In **Ohio v. Whisner** (1 Ohio Opinions 3d - No. 75-746, decided July 28, 1976), an expert witness for the church, Professor Donald Erickson of the University of Chicago, testified that he is "of the firm position that the

state has some far-reaching fundamental educational responsibilities . . . " He further testified, "I don't think the state has any compelling interest at all in requiring schools to live up to the minimum standards in this book as a whole " (Page 111)

On August 15, 1974, the trial court in its opinion said: " . . . counsel for the defendants do not attack the well established law of this state and nation . . . that the natural rights of a parent to the custody and control of an infant child are subordinate to the power of the state; that a parent has an obligation to educate not only to the child but to the state; that the state has the power and duty to promulgate minimum standards for the education of its children and that compulsory education laws have been universally upheld as constitutional . . . the defense rests solely upon the contention that the minimum standards are vague, that they admit to several interpretations; that they are not rational . . . The court was not impressed by the testimony of the defendants' two expert witnesses . . .

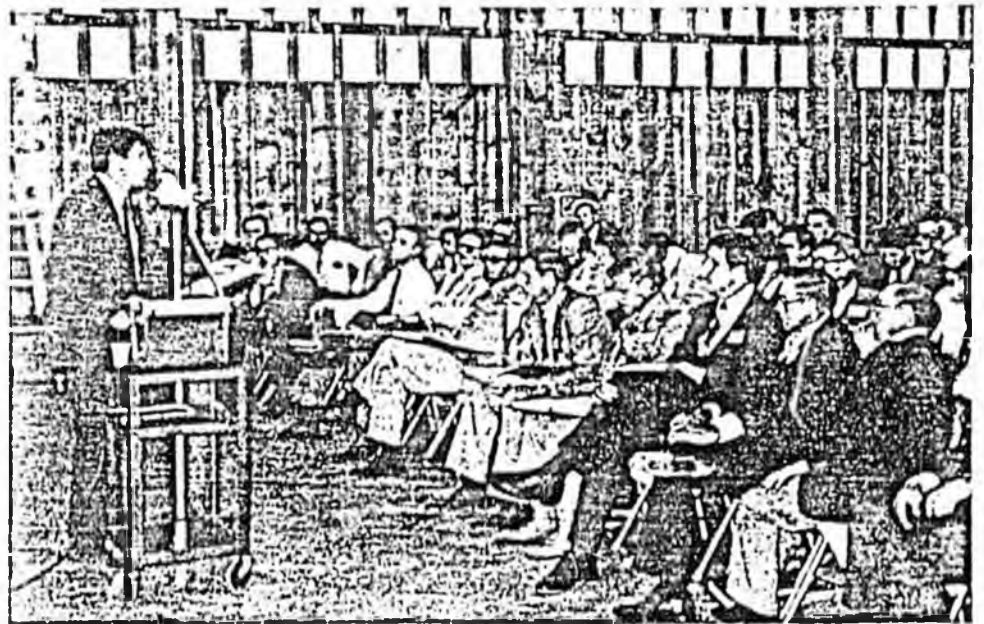
Mr. Erickson agrees that the state has far reaching fundamental educational responsibilities and that it must regulate education . . . the basic thrust of the defense appears to be that there should be two sets of standards, one for tax supported schools and another of lesser requirements for Church or private schools " The conviction by the trial court was affirmed by the Court of Appeals which noted "But as stated in **Wisconsin v. Yoder**, there is no doubt as to the power of a state . . . to impose reasonable regulations for the control and duration of a basic education. "

The Ohio Supreme Court reversed the lower courts in favor of the church, noting that the church did not maintain that the state is devoid of all power to promulgate and enforce reasonable regulations affecting non-public schools. They mention minimum hours, employment of teachers with specified training and covering prescribed subjects. The decision said, as applied to this church, the minimum standards taken as a whole unduly burden the free exercise of religion and overstep the boundary of reasonable regulation. A separate opinion by Justice Stern stated: "Under a more reasonable construction of those provisions, the constitutional issues raised by the majority need not, and, therefore, should not even be considered

The Ohio Department of Education realized the way to overcome this decision (that their standards merely went too far, thus being entangling) was to write new, less entangling standards. These new standards were finalized and published on December 12, 1980. The **Whisner** decision rematerialized in the language of the Olin decision, rendered by the Ohio Supreme Court on December 30, 1980, wherein the court once again said if new, less-entangling standards were considered, its decision would go the other way.

"Entanglement" is clearly defined and demonstrated in the area of taxation of churches in **Walz v. Tax Commission**. The U.S. Supreme Court's majority opinion said churches were tax exempt, but not on the grounds of total separation of church and state. The court found "room for play," as long as

court, because taxation would involve more entanglement than exemption. The court states that church tax exemption is an indirect economic benefit, but not sponsorship. State legislatures, according to the court, can tax certain property at a lower rate wholly at the legislature's discretion. Tax exemption is thus viewed not as a right the church has, but a privilege granted by the state based on being less entangling than taxation. Justice Brennan's second reason for tax exemption for churches is that churches fit into the "pluralism" of American society thus helping to make society diversified. The church is viewed as only another organization that "is organized exclusively for the moral and mental improvement of men and women." He notes that the granting of the exemption may be wholly secular in nature. However, he agrees the secular is so intertwined with the sacred that to



Delegates at the CLA Biblical Legal Seminar

there is not excessive entanglement, noting prior rulings allowing government to provide textbooks and busing for religious schools. The dangerous implication is that the state can aid church functions outside the worship of God. This comes close to saying that some educational functions are not sacred and God mandated. The court further states that church tax exemption is the same as that afforded hospitals, libraries, patriotic groups, etc. Exemption is granted because the groups are "useful and desirable" to the state. Tax exemption would be lost if those groups (including a church) are considered no longer within this classification. Churches are exempt according to the

separate them for tax exemption could be too entangling.

Justice Harlan carried the trend even further by saying that the same exemption could be given to atheist groups because the exemption is based on charitable activities which would otherwise be borne by the state. He states that if the church is not involved in "secular" charitable community projects, tax exemption would be improper. He continues by saying that subsidy of the church through state tax exemption is a matter of degree to be determined by the U.S. Supreme Court.

The Word of God says to render unto

The latest trend is most disturbing, some of the people who argue against entanglement are proposing laws that entangle church with the state.

Caesar the things that are Caesar's, but to render unto God the things that are God's. The tithe is the Lord's (Malachi 3:8-10)...God will not allow his tithe to go to Caesar, especially to support wicked programs such as abortions. As a matter of free exercise of religion our church can pay no tax. This would not apply to assessments. It is faulty reasoning to contend that our church tax exemption is not a matter of right, but abstention by the state in not exercising its right to tax because taxation would be too entangling. To me some churches who pay taxes (such as unemployment compensation) under protest are sacrificing their conviction against paying taxes in order to argue that taxation is going too far and entangling. Some cases concerning licensure are being argued from the standpoint of "entanglement." In one case I attended not argued by CLA, this was so clear to me. It was plainly brought out that the pastor was not opposed to all licensure of the church. A copy of a cafeteria permit was shown as an example of the church accepting a license. An expert witness testified to a certain point, then abruptly stopped. What he did not testify in this particular case, that he usually testified in other trials when I have heard him, is that historically the church has rejected all licensure because a license speaks of Lordship, only a higher can license a lower, a license is the permission to exist, and no one can replace the Lord Jesus as Head of the Church. It seems to me that higher courts will reason that if this church can take one license on their cafeteria, why can't they take another license on their childrens' ministry as long as the minimum standards are not too "entangling?" Why not take the license on the childrens' ministry and accept a variance on every standard the church finds objectionable? A recent case on zoning illustrates the pitfall of arguing establishment/entanglement. In **Damascus Community Church v. Clackamas County**, a church was issued a Conditional Use Permit allowing them to use their property for a "church" in 1967. In 1975 the county became aware of a church school that had operated for some time. The school was ordered closed by the zoning

board. Upon advise from counsel (not a CLA case) the church applied for a second Conditional Use Permit to operate a "school." This admitted the school was not the same as the church. The Oregon Supreme Court ruled: "By applying for a Conditional Use Permit for its school, the petitioner in effect concedes, that, for the purpose of this proceeding, its proposed use was not permitted by the original permit." On February 23, 1981, the U.S. Supreme Court refused the appeal, thus allowing the lower court's decision to stand.



Charles Craze teaching the separation of church and state

The Bible plainly teaches a geographical will of God. This church contends God led them to this property and through faith provided for the church to begin. God also led them to begin a church school (102 students on six acres located in a sparsely populated agricultural and residential area). One can understand a compelling government interest if a pastor said God told him to build a church on another man's property without permission. However, in this case there is no compelling interest, no question of safety or criminal law. A careful reading of the case suggests the church would have won had a pure stand based on free exercise been taken without the compromise, especially of seeking a second Conditional Use Permit.

The latest trend is the most disturbing. Some of the same people who argue against entanglement are proposing laws that unbelievably entangle church and state. A proposed law in Washington state forces church schools to "make and maintain daily attendance records, provide minimum total program (hour) offerings required of

public schools, provide instruction in mathematics, reading, science, social studies, spelling and writing, administer at least once a year, a nationally standardized test, make records of the test available to a duly authorized representative of the state superintendent of public instruction, maintain on file health certificates for each teacher, make attendance and health certificates available for a representative of the superintendent of public instruction, maintain permanent student records and forward such records in event the church school should close, forward all student records to the nearest local school district office, have a policy which prohibits racial segregation, require students to provide proof of immunization, send a notification letter to the superintendent of public instruction by November 15th of each year, giving name and address of school, name of principal, statement that as a matter of conscience and/or religious beliefs it qualifies as an exempt school, grades which it operates, enrollment both in total and by grade. Other states are passing similar laws. These unscriptural, compromise laws will effectively divide the fundamentalist churches. A few "hardliners" will refuse to submit. They will be sued. Fundamentalist pastors who submit will be subpoenaed as adverse witnesses and forced under oath to testify against their brother pastors. Their testimony will be effectively used to show the unreasonableness of the few purists.

A similar law is proposed in North Dakota. A watered down version was passed in North Carolina. A Washington State Senator summed up the situation rather well as he commented about a state department of education representative coming to him, urging his support of the bill (described above). The bureaucrat commented, "We need this piece of legislation. They are contesting laws in other states and proving the laws are unconstitutional. With this law, we can still keep the church schools under our control." The bureaucrat plainly sees they must push to the very limit of "entanglement" and maintain control, while they wait for the right moment to move in for the kill. ■

REASONS WHY WE CANNOT ACCEPT
L I C E N S U R E
OF OUR CHURCH MINISTRIES

The subject at hand has to do with the licensure or certification of pre-elementary programs in the State of Alaska by the Department of Education.

Our special concern has to do with the impact of these proposed regulations on our Church ministries.

THE U.S. CONSTITUTION EXEMPTS CHURCHES FROM STATE CONTROL.

The First Amendment to the U.S. Constitution plainly says, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;" It should be crystal clear from this simple statement that the Church is constitutionally exempt from licensure.

At the same time, it should be noted that it is the responsibility of the Church to provide buildings and equipment that meet reasonable regulations for fire, life safety, health, and sanitation when they are equally and fairly applied to all alike.

On the other hand, inspection of personnel, programs, finances, records, curricula, etc., is clearly a violation of the First Amendment, and cannot be permitted by the local Church.

The First Amendment to the Constitution guarantees a separate Church and State. Historically, this has meant that the Church was not subject to the State, nor was the State subject to the Church.

The First Amendment also guarantees "free exercise of religion." Our nation has repeatedly recognized the value of this most important clause, and has resisted infringement of First Amendment rights of the citizenry.

In 1925 the State of Oregon passed a law requiring all students to attend public schools. Catholics argued that this violated their First Amendment rights because their children could no longer attend parochial schools. The U.S. Supreme Court ruled in favor of the Catholics in a case known as Pierce v. Society of Sisters.

WHO IS RESPONSIBLE FOR THE EDUCATION OF THE CHILDREN?

Here we must consult the words of Jesus Christ as recorded in Matthew 22:21. ". . . Then saith He unto them, 'Render therefore unto Caesar the things which are Caesar's, and unto God the things that are God's.'"

On this Biblical basis we declare that neither the family nor the children belong to Caesar. In this view we contend that the Church is not to be controlled by the State. Furthermore, the Scriptures do not declare that the State has a compelling interest in the education of a child, or that it is responsible to guarantee his education.

Constitutional issue - State's obligation for education

Deuteronomy 6:3-7, Psalm 78:4-8, Proverbs 22:6, Galatians 4:1&2, and Ephesians 6:4 set forth the Biblical mandate that parents, especially fathers, have the primary responsibility for the education of their children, and that the local Church has the secondary responsibility.

One of the ministries of the Church is education. The Great Commission commands the Church to teach. Matthew 28:19 is a commandment to the Church. In I Timothy 3:15, the Church is called "the pillar and ground of the Truth."

At this point, it should be stated that fathers may delegate areas of their responsibility, but they can never be rid of the responsibility itself. It should be remembered that a person who delegates his responsibility to another is still responsible to see to it that the task is accomplished.

All education is inherently religious. Because this is true, it is impossible to teach without setting forth a philosophy of life. It is impossible to teach facts, whether they be historical, mathematical, psychological, or any other kind, without arriving at a conclusion to which those facts ultimately point. Facts cannot be isolated; they are a part of the whole.

In teaching, we convey our own values, or the lack of them, whichever the case may be. Our habits of life inevitably come through.

Christian parents have the distinct responsibility to train their children in God's way, since education is a religious function. A person simply cannot teach without instilling values and philosophies into the students in the classroom.

Christian schools customarily achieve academic excellence through a disciplined subject-centered teaching methodology which employs a completely different approach from that of the child-centered programs used by State and government schools.

LICENSURE IS ABSOLUTELY UNACCEPTABLE.

If our Churches accepted a State license for their educational programs, there is a very real possibility that the same objectional programs which have already failed in the public sector would be forced upon the Christian schools. Even a cursory inspection of State licensing rules, as proposed in the considered document, quickly reveals a philosophy of education diverse from that of the Christian Church sector.

Sex education classes in the public sector are often required to display graphic illustrations of sexual activity before elementary school students. Perversion is treated as normal. The sin of sodomy is called "sexual preference" or a "lifestyle." The use of such euphemisms to classify sin is diametrically opposed to the Biblical philosophy and teaching of the Christian schools.

State licensure of Christian schools would establish de facto State schools, since the Christian schools would be at the mercy of State agencies for their existence. For these and other reasons which we shall cite, the Church cannot accept State licensure for its ministries.

When the State seeks to compel a Church to be licensed by the State, and thereby be controlled by the State, the State is in violation of the First Amendment to the Constitution. We simply cannot render to the State what belongs to God, because we are loyal to the Sovereign Head of the Church--The Lord Jesus Christ. All educational programs offered by the local Church are off limits to the State.

ADMINISTRATIVE RESPONSIBILITIES.

Administratively, it is imperative that we reserve the right to make the decisions with regard to personnel, textbooks, disciplinary practices, curriculum, and all other areas which affect the quality of our teaching ministry. Our Christian Churches and schools must be able to preach and teach without interference from the State into their ministries.

Advocates of State licensure use the specious argument that it is necessary for the "protection" and "welfare" of the children enrolled in Christian pre-elementary programs. The case simply has not been made that licensure "protects" the children.

Astute observation of these efforts at licensure of Church ministries in other states has revealed that the so-called

need for licensure is but a guise for concealing the motives for the enhancement of power by a self-serving bureaucracy.

Advocates for licensure of the local Church seem to think that unless a Church provides pre-elementary and pre-school services free of charge, it is operating a business rather than a ministry. Biblical history and common sense dictate a completely different view. The Bible plainly teaches that "the laborer is worthy of his hire," and each employee of full-time Church ministries deserves an appropriate remuneration for his labors just as much as do the pastor, associate pastor, and full-time teachers in the Christian ministry.

There is another question to be addressed as we conclude our considerations. Should a ministry be limited only to its Church members in order to escape the allegation that the Church is operating a business? I think the answer is quite obvious: No other ministry is so limited in its outreach. No church limits its attendance to its membership. Once again, the First Amendment is violated if government and private businesses are allowed to determine that a Church's pre-elementary educational ministry has in fact become a business because its outreach goes beyond its immediate membership.

WHAT ABOUT CIVIL DISOBEDIENCE?

Since we have taken the position set forth in the previous paragraphs of this document, we are faced with the responsibility of stating when it is Biblically correct to disobey civil authority. WE MUST DISOBEY CIVIL AUTHORITY ONLY WHEN IT WOULD REQUIRE US TO ACT CONTRARY TO GOD'S COMMANDS. If the State Department of Education should endeavor to force a local Church to apply for a D.O.E. certificate in order to keep its pre-elementary educational ministry open, we would have no choice but to disobey the requirement. This is due to the fact that Jesus Christ is Lord of the Church, not the State Department of Education.

Licensure is an activity which proceeds from the superior to the subordinate. The U.S. Constitution calls for the Church and the State to exist alongside one another. We would never agree that the State Department of Education or the State of Alaska itself is superior to the local Church.

Furthermore, if the State should proceed to license a Church's pre-elementary education program, it would be violating the Constitution by "establishing" a school of religion by the State!

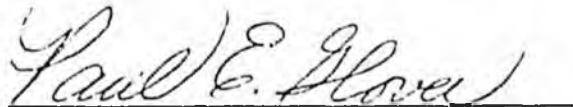
FINAL ANALYSIS.

The ultimate responsibility for the education of children lies within the home, not the State. Biblically and historically, the family is God's first and basic institution. The authority and love which God has ordained for the family must not be violated by any action of the State.

Much of the blame for the frighteningly large number of broken homes today lies with the failure of other institutions to honor the sanctity of the family.

Since there is a considerable body of evidence which supports the idea that more than three-fourths of a child's personality and character is formed by the time he is six years old, the Church must not abdicate its responsibility in providing a suitable Christian education for these children in their tender years. By the grace of God, we will fulfill our commitment by meeting the demands of the Great Commission and provide a Biblical education for the children of parents who have enrolled their most precious treasures in our Christian schools.

Respectfully submitted,



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PEG:hm
November 9, 1982

Our Opinions

Functional Illiterates

Twenty-three million adult Americans — a staggering 20 percent — are considered functional illiterates because they can neither read a restaurant menu nor fill out a job application form.

These people aren't to be confused with "conventional illiterates" — individuals over the age of 14 who lack a sixth-grade education. To the contrary many functional illiterates have high school diplomas, yet they cannot perform basic tasks that most people take for granted.

According to a University of Texas study, 11 percent of American high school graduates can't read well enough to interpret a bus schedule or address an envelope.

The latest group to declare war on educational failure is the Coalition for Literacy, an alliance of volunteer groups, businesses, and public service organizations that has announced a campaign to reduce the number of functional illiterates in American society.

Notwithstanding the coalition's good intentions, it must be noted that there have been many other volunteer groups devoted

to assisting undereducated adults. The federal government also began funding adult basic education 18 years ago, and in 1969 launched the "Right to Read" campaign. Yet, according to a 1979 Ford Foundation report, "only 2 to 4 percent of (the illiterates) ever enter the programs."

It appears these efforts are little more than ineffectual, albeit sincere, stopgap measures.

The cause of functional illiteracy is an institutional unwillingness to either accept past failures, or do something about present problems.

We refer, of course, to those public school systems that stubbornly refuse to require minimum-competency standards of their students. So long as schools fail to insist that their students meet fundamental educational objectives, the number of failures will continue to increase.

And all the well-intentioned programs for the victims will do nothing for the root cause of illiteracy — our defective public schools.



Are schools really better than ever?

By Arthur E. Hippler

VIEWING THE PAST in reseat hues is usually an exercise in selective retrospection. Much in the "good old days" was really terrible, as anyone who was there can easily point out.

An exception to that view might be made for education. This was brought home to me with some force as I mentally attempted to compare the education being received by my eldest son and that which I received some 35 or more years ago.

By the time I'd left parochial elementary school, I had a good working knowledge of the major sequences of historical events from the Hellenic period of Greece to the first World War, a broad geographic perspective of the world and its countries, and a capacity to read at what would now be considered the 12th grade level (standards of reading achievement have been substantially "democratized" since then).

IN PAROCHIAL high school, history and geography were expanded upon and one could take both Latin and a contemporary foreign language, physics, chemistry and math (not including calculus). Social science, as such, was (fortunately) in short supply; no sociology or anthropology or psychology were offered.

Perhaps most importantly, we were provided a purpose for learning and a sense of right and wrong. About half my fellow students and myself were from very tough neighborhoods, and while fighting may have been common away from school, it was nearly unheard of within its boundaries.

Assaults on teachers would have been inconceivable as would incidents involving weapons, drugs or alcohol. Interracial conflicts were few in number.

Presently in the Anchorage school system, which I am told is one of the best in the U.S. and which seems to be staffed by people whose paper qualifications may be superior to those of the

teachers of my childhood, it seems possible to get through without really learning much history or geography, and to have "value free" (which really means value hidden) social science courses substitute a mushy kind of internationalist freebootery for serious substantive information about government.

Much more math is offered in the Anchorage school system than in those of my youth; it may be the outcome is greater mathematical sophistication.

SCIENCE COURSES, which offer the possibility for the learning of substantial content in the presence of intellectual discipline, are on the surface far better than those I was offered.

Unfortunately since children in this system do not learn to read or write either well or critically, the offerings must almost always be watered down. I understand they are presently in the process of further dilution locally.

MOST APPARENT of all is the breakdown of personal discipline. Minimal homework, minimal demands and "prepping" of students for the Iowa Basic Skills Test by teachers (so the school district will compare well) teach a lesson whose outcome is anti-social behavior within the very school.

Of equal importance is the uphill struggle to find teachers able and willing to communicate the powerful positive message of the cultural contribution of capitalist democracy. In any society the schools must communicate their basic values. Ours do so poorly because in large part schools are dominated by liberals who are very fuzzy about what our society's values are, but who are perfectly willing to substitute their own.

On the one hand, I can sympathize with them. How can schools supported by public funds formally

teach values alien to any segment of the supporting society? But such teachers are rarely consistent, and often define their own vague leftism as "progressive" and everything else as vaguely "reactionary." Thus they wind up teaching the contradictory idiosyncratic values of nihilism and collectivism. Liberals who learned their ideas about society from left-wing professors are not prone to teach the importance to human freedom of capitalist democracy.

The core of the difficulty is the decline of private education, a reality forced upon us by the massive tax support of public schools

and the imposition of curriculum control by state education departments and the ubiquitous self-serving teachers unions.

VARIETY in the educational experience, and hence useful competition of approaches, cannot be accomplished by smorgasbord offerings in the public system, since within that system the ethos and ideology remain fixed. If we wish to offer our children an education with vitality, we must remove barriers to private education, so that our high school grads will be able to read Horace, will know what happened at Thermopylae and why, and will understand just what the contributions of democratic capitalism have been.

Absent that kind of change, you'd better continue to expect your children to get less than you did, in the guise of getting more.

Arthur Hippler, co-founder of the Alaska Civil Liberties Union, is a research associate professor of anthropology at the Institute for Social and Economic Research, University of Alaska.

Law review
Vol 16 - Wake Forest
pp. 445-1980

Academy
Dot Lines - 303-
830-3650

1 Religious
2 Identical
Statutes
1) Religion
2) Accreditation
Analyze in law
review as potential
"model"
Welcome
law!
Voluntary

Use - complain
unconst. - for failure
to define "school"
void for vagueness
case definition

Alabama did the same as 357 (Weak) Constitutional question not yet challenged!

Yoder case - Yonick. Sup Ct decision. Ct ordered exemption specifically for that case!

Use term "by reason of religious or conscientious conviction" - by the administrators of the school

Colorado has de-reg bill exempting non-public schools.

"For non-profit ^{org.} schools that are exempt will be exempt if the



Alabama - other states do it for all private education.

NC - allows school to be approved by the state
OK

Education Week

- Oct 82 - Phi Delta C PHI - Delta Kappans

State does have interest! Testing - ^{standardize} tests
if de-regulated - how well on tests

- ① Consider protection needs of parents
- ② - People together in non-political environment to talk.

AD of Texas - appeal is in appellate system

now -

Gov Clements - 1st Rep. Gov in Texas

Calif - 100 churches have lost tax exemption -
county sells prop to the state - Church has 5
years to redeem the property.

- would not allow state to combine church w/ school.
School had to come under Dept of Welfare.

- could not preach or influence legis unless
reported teaching to franchise tax board.

St of Calif won't allow them to defend
themselves because they're not a recog. entity -
however they are still taxed.

~~Flourished~~ Kentucky Dept - brought into state court for a
custody hearing for the crime of education

There is a Christian school

(Finally won the case in court)

★ - Religious freedom issue not an education issue -

Neb - very powerful teachers union

Rev. ~~Sullivan~~ Sullivan
Faith Baptist Church

Judge ordered school closed -

Rev. refused - Judge found him in contempt

School was closed except for church services

17 Students

- they moved into Church ~~and~~ ^{and} on line there.

3 months 17 day - contempt ~~charge~~ charge

Judge said laws needs to be solved by legis.

DR. Gregg Dickson

Unconformal leg. in Neb. - w/ state law exempting

churches. Religious liberty from

Corpus Christi Texas

Gov. illegally w/o state approval - arrested Rev. Sullivan.

- Judge case - trampled constitution

Faith Christy School will remain open

→ won't be reg by state - as certify teachers

~~→~~

If they loose - Religious freedom in Amer is gone
per Rev.

Issue Bottom line not education as says press
"Press" will not allow state to reg. this edur "

Rev
Reverend

Is the Church a sly of the state. - Can the
state control any or all of the Church. If they
have the rite to license teachers - they will
have the rite to license preachers - worship serv
sunday school etc - we say none - How far
can the state go?

5/17 7pm Mtg

Tischen - Steve Hales Amer / DOE -

① pg 2 - technical changes -

① pg 2 l 1 - change Dept to State Bd of Educ
As a sect 26 Bd - has sole authority,

to adopt reg's

② sec 5 l 24 - unnecessary

③ Sec 4 - offered by DOE but not ^{necessarily} same as what
they - pt to sec (c) pg. 3. - not necessary

④ l 1 pg 3 delete parent visit religious school

Hole - if we get from parent okay - but - if does not enroll in a
public school no way to know if he is re-enrolled.

Hole - confused about Sect 4: Intent of section:

Hole - Reg. of 16-21 - private school not otherwise affected
by the effects of this bill (religious) to report - any
non-religious or for-profit schools.

they - Sect. also applies to religious schools that choose not to
comply w/bill.

Hole - creating 2 separate reporting methods. - Maybe 2, one
oversite. Increased burden to state.

⑤ pg 3 l 6 - delete 9 mo - visit 180 days.

Hole - N.C. statute - 11th grade proficiency test language -
doesn't define quality of test.

⑥ H.S. be req to provide school calendar - # of students
enrolled in each grade - purely statistical.

Would be the same for all private schools. Does 4
partly requirement.

tape # 1720

Hole - Compulsory attendance not req. by St Brd. Collect aggregate info by district generally.

Report for Foundation - based upon all the schools - when we deal w/ private schools they are separate entities.

Tischer - Is this info classified -

Hole - Any parent & school officials has access to confidential information.

critical - immunization records - less critical - achievement records.

M. Miller - Testig is important on behalf of receiving school.

Tischer - Req. by religion school teacher - do not require any more than what is required of public schools.

Koppen - 14.09.020 - Provides Transportation

14.30.010 - Compulsory Attendance

14.45. - Deal of private & denominational schools - cert repealed in 1966 -

14.45.020 - permission - allows comm to grant diplomas

Ques - What is acute immediate danger or problem that has brought forth bill? Problem in some other state - not Alaska.

Tischer - Preventive measures are the best - national interest

- Endorse as long as DOE is context of monitoring

M. Miller - No problem for private schools re DOE amendments. -

- Motion to adopt. DOE amendment.

Hole - "Competency requirement"

John Krause - Pro NEA - opposes bill - based on fear of professional organization - must strengthen standards this bill weakens bill. Under CS amended - no requirements for certified teachers. No min graduation requirements. Free exam & religion differs from secular matters. Perhaps state should establish a standardized test. No challenge to statutes - no evidence of burden. Generated by the new Commission from Maine. Should be no transportation of these pupils or activities on spec educ @ public expense. No reason to change now.

Fitz - Portals of public transportation? Special Educ.

Krause - In Andover students, on occasion, students transfer to special educ classes provided by public schools.

Dall - Henry's opinion illegal to schools if do not receive state or fed funding - relationship w/ other Federal or state assistance.

Levy - Request to hear that private school - At Supreme Ct. -

Mr. Miller - This catholic school - reimburse school dist for buses used.

Koepner - 14.09.020. Transp for - By Dick Bavel -

Fitz - Teachers on their own recognition - why is end user seem to be superior educ in private schools.

Rep Schutt - opposed to bill - more press - leading to mediocrity. Should turn this into a resol. to Gov to DOE to set higher educ. standards.

Dall - Issue of church state relationship raised -

Schutt - States respon to set standards? do see

For Nurse - Dept H&A - approve rel parent? how it affects

learn programs - day care? alert -

major concern - to exclude pre-employment operators by

religion

the background in operator of facility

emergency child restraint

emergency protection - uniform & patches

just order

to

group in sq. footage req.

admission of medication

Purpose of Licensing - Pre-schools - 3-4 1/2 yrs old.

- OK - No wonder they're reluctant to remain day care assistance - cos

Move out as immediate - Problem - 12 10-14 pg 1 / DHSS would contact pg. 12 13 - in our long -

More - AS for 357 (H&A) - And Roe



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

May 13, 1983

MEMORANDUM

TO: Representative Sam Pestinger

FROM: Leslie Longenbaugh *LL*
Research Staff

RE: Other States' Regulation of Religious Schools
Research Request 83-159

Ed Essa of your staff asked that we provide information about states that regulate religious and other nonpublic schools differently. My preliminary work, provided to you on May 4, revealed five states that exempt religious schools from some state regulation to which other nonpublic schools are subject. Upon further investigation, I found significant differences in regulation in only three states: Maryland, North Carolina and Tennessee. Below is a brief description of the statutory distinctions made by each state; I have attached copies of the pertinent state statutes.

Maryland

Maryland requires that private "noncollegiate" schools obtain a state certificate of approval before they may operate in the state. The issuance of such a certificate of approval is contingent upon the state board of education's finding that the "facilities, conditions of entrance and scholarship, and educational qualifications and standards are adequate and appropriate" for the type of school.¹

Specifically exempted from the requirement of a certificate of approval are all institutions "operated by a bona fide church organization..."² Schools that come under this exemption may not receive any state funds other than funds for the state food service program.

All private noncollegiate schools in Maryland, including the religious schools that are exempt from the certificate of approval, must make annual reports of their enrollment and courses of study.³ In addition,

¹ Annotated Code of Maryland, Education § 2-206 (e)(2).

² ACN § 2-206 (3)(4).

³ ACN § 2-205.

they must conform to a state law that requires private schools that are ending operation to furnish to the state the academic records of all past and present students.

North Carolina

North Carolina in 1979 enacted a statute which has served as a compromise between the competing interests of religious schools and states.⁴ For the purposes of state regulation, the law creates three types of legal nonpublic schools: 1) religious schools, defined as "private church schools or schools of religious charter"; 2) "qualified nonpublic schools" -- these institutions are either accredited by the state or an association or receive no state funds; and 3) "proprietary schools," or nonpublic schools that are operated for profit.

Schools in the first and second classifications above (religious institutions and other nonpublic schools) share the following requirements:

- a) notice to the state of the intent to begin or cease operation;
- b) maintenance of annual attendance and disease immunization records for all students (there is no requirement that these records be submitted to the state);
- c) operation on a regular schedule during at least nine months of the year;
- d) subjection to reasonable fire, health and safety inspections as required by law;
- e) administration of nationally standardized tests for all students in the first, second, third, sixth and ninth grades;
- f) administration of nationally standardized tests for all students in the eleventh grade and establishment of minimum standards for achievement on the test before graduation.

In addition, schools of these two types may choose to participate in any state-operated or -sponsored program which is available to other nonpublic schools. The statute adds that no other state laws, except health, fire and safety laws, are applicable to these schools.

Apparently, North Carolina is one of only three states that require standardized testing for students of religious schools (New York and

⁴ General Statutes of North Carolina, § 115C-547 through § 115C-554.

Representative Pestinger

May 13, 1983

Page 3

South Dakota are the other states). In North Carolina, the chief administrator of the religious school may choose the test, rather than having the state select the tests to be given. The tests need cover only the basic secular skills -- grammar, reading, spelling and mathematics. Records of the test scores must be available for state inspection for one year following the test.

Nonpublic schools that are operated for profit must obtain a license from the state annually. The state board of education is charged with promulgating and enforcing regulations and standards governing approval and licensure. By law, the reports solicited must include detailed information regarding curricula, costs, and instructional space. In addition, the schools must post a bond of \$1,000.⁵

Another difference in the requirements for licensed and exempt nonpublic schools in North Carolina is the certification of their staff. While North Carolina is one of the few states that require nonpublic-school teachers to be certified, teachers in religious schools are exempt from this provision.

Tennessee

The Tennessee Department of Education, by regulation, requires that all nonpublic schools report the name, age and address of all students to the local public school superintendent for the purposes of ensuring compliance with attendance laws.⁶ Otherwise, state law requires only that the department of education inspect, approve and classify those primary, secondary and pre-elementary nonpublic schools that request such services. The approval is to be according to the standards that are used for the state's public schools.⁷

In 1976, the Tennessee legislature enacted legislation which prohibits the state and local boards of education from regulating the selection of faculty, textbooks or curricula of "church-related schools." The law requires that these schools meet the standards of accreditation of at least one of four nonpublic school associations. The law does require that the terms of church-related schools be as long as the public schools'.⁸

⁵ GSNC §115C-570.

⁶ Donald Wood, Chief of Management Services, Tennessee Department of Education, Nashville; telephone: 615/741-2731.

⁷ Tennessee Code Annotated, 49-105 § 19.

⁸ TCA 49-5201.

Representative Pestinger
May 13, 1983
Page 4

The statute adds that children who attend church-related schools may transfer into the state's public school system; however, the public schools may test such students and place them at a grade level that is indicated by the results of the test.

Like other nonpublic schools in Tennessee, church-related schools may apply for state approval, and many do. Of approximately 440 nonpublic schools in the state, roughly 160, both religious and secular, have received state approval.⁹

Case Law

Mr. Essa mentioned an interest in the case law about the regulation of religious nonpublic schools. I have enclosed a copy of a law review article written about North Carolina's regulation of religious schools; this article contains a concise overview of the findings of the United States Supreme Court and state courts of last resort.

* * *

If you have any questions or further needs for research, please call on us.

LL

Attachments: Annotated Code of Maryland, Education, § 2-205, § 2-206,
§ 2-304
General Statutes of North Carolina, Articles 39 and 40
Tennessee Code Annotated, Chapter 52 and § 49-105
J. Eric Evenson II, "State Regulation of Private Religious Schools in North Carolina -- A Model Approach,"
Wake Forest Law Review, Vol. 16 1980, pages 405 to 437

⁹ Donald Wood, Tennessee Department of Education.

MAY 11 1983

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 11, 1983

SUBJECT: Chief school administrators
(CSHB 384 (HESS))

TO: Representative Mae Tischer
Chairman, Health, Education, and Social
Services Committee

FROM: Keith B. Levy *KBL*
Legislative Counsel

Enclosed is a draft of a Committee Substitute for HB 384 (HESS). The bill may present a constitutional problem which you should be aware of. In addition, this draft differs in certain respects from the request I received from your office.

The committee substitute sets out certain limits on what a chief school administrator for a regional educational attendance area may do and the compensation he or she may receive. To go outside of these limits, the chief school administrator must obtain the approval of the school board and the legislative budget and audit committee. It may be a violation of the separation of powers doctrine for the legislature to require an employee of the executive branch to obtain legislative approval since that approval may be an executive function.

However, the state constitution does allow the legislature to exercise certain executive powers with respect to the unorganized borough. Article X, section 6 of the state constitution provides:

The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

Accordingly, CSHB 384 (HESS) may be a valid exercise of executive power by the legislature since the bill only applies to chief school administrators in the regional educational attendance areas. Since the extent of the legislature's power to perform executive functions in the unorganized borough has not been fully defined by the courts, however, the bill merits a discussion of the separation of powers issue.

The Constitution of the State of Alaska implicitly recognizes the separation of powers doctrine. Public Defender Agency v. Superior Court, 534 P.2d 947 (Alaska 1975). Article III, section 1 of the state constitution provides

The executive power of the state is invested in the governor.

Accordingly, the legislature may not reserve to itself an executive power unless the constitution specifically provides for such a retention of power. Citing the United States Supreme Court, the Alaska Supreme Court noted that

Legislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them or appoint the agents charged with the duty of such enforcement. The latter are executive functions.

Bradner v. Hammond, 553 P.2d 1, 6, n. 17 (Alaska 1976), citing Springer v. Philippine Islands, 277 U.S. 189, 202, 72 L.Ed. 845, 849 (1927).

If the approval required in the bill is construed as a legislative rather than an executive function, there is no constitutional problem. This interpretation is feasible with respect to AS 14.14.130(d) in the sense that fiscal control is at least in part a legislative function and that subsection allows the legislature to ensure fiscal integrity by retaining the power to disapprove budget excesses by chief school administrators. On the other hand, a court could also construe this power as executive in the sense that it is the power to enforce the law, i.e., the power to ensure that a chief school administrator does not violate AS 14.-14.130. At the very least, that subsection is open to constitutional attack. Some of the remaining subsections, however, do not even have the fiscal justification found in subsection (d). Subsection (f) requires legislative approval

of military and sick leave exceeding six days by chief school administrators and subsection (g) requires legislative approval for sabbatical leave. These duties are clearly administrative and would require the legislature to make executive decisions. In my opinion, such a usurping of executive power would be unconstitutional without express constitutional justification. As noted above, however, Article X, section 6 of the state constitution may provide that justification.

Moreover, there is some precedent in the Alaska Statutes for requiring legislative approval of executive acts. AS 38.-06.055(a) provides

(a) In addition to the recommendation by the board required under AS 38.06.050, the commissioner of natural resources may not enter into a sale, exchange, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas under AS 38.05.183 without the prior approval of the legislature. The legislature may approve a sale, exchange, or other disposition of oil or gas or of the rights or of a waiver of the rights to receive future production of royalty oil or gas only by enacting legislation.

This section has not been challenged in the courts. However, in an opinion addressed to Senator Ziegler regarding other aspects of AS 38.06.055, former Attorney General Avrum Gross said

It is no secret that the statute authorizing legislative approval of these contracts creates some rather serious questions concerning separation of powers. There is no need to reach the constitutional question in this case, since whatever the legal merits of the issue, the Governor has submitted these contracts to the legislature for its approval and will be bound by its decision.

Op. Att'y Gen. February 23, 1977. In other words, although the attorney general felt that the requirement of legislative approval might be unconstitutional, he chose not to address the issue since the governor had agreed not to challenge the statute. If the present administration were to challenge the provisions of CSHB 384 (HESS), the same constitutional issues would arise. In my opinion, such a challenge could fail because of the legislature's unique

Representative Mae Tischer
Page 4
May 11, 1983

power to govern in the unorganized borough. I would caution, however, that the exact meaning of Article X, section 6 is not clear and the question is still an open one.

You should also be aware that the provisions in this draft of the committee substitute relating to tenure of chief school administrators differ from your draft request slightly. My understanding is that you wish to provide that a chief school administrator may not acquire tenure and a teacher must forfeit tenure if appointed to the position of chief school administrator. Your draft request did not cover the possibility of a teacher who has already acquired tenure before being appointed chief school administrator. Accordingly, the enclosed draft amends two sections of Title 14 to provide that a chief school administrator forfeits tenure upon appointment and may not acquire tenure after appointment.

KBL:ljb
19/001

made into new
law in CD. - 14.45.040. Records

Section 6. AS 14.45.030 Sentence addition to paragraph (c).

Such schools shall report annually the number of students enrolled in each grade and provide a copy of the school calendar to the department.

Such schools shall maintain adequate student records, including all information required of public schools or ^{attendance:} immunization, physical examinations, testing and courses taken while in attendance at the religious school.

Hess CD
Final
4

WORK DRAFT
WORK DRAFT
WORK DRAFT
Levy
5/13/83 ✓

Original sponsors: Fritz, Tischer,
Pestinger, et al

1 IN THE HOUSE


BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 357 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the regulation of religious
7 schools."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 14.07.020(8) is amended to read:

10 (8) in cooperation with the Department of Health and Social
11 Services, exercise general supervision over public and private pre-
12 elementary schools and over the educational component of nurseries as
13 defined in AS 47.35.080(4) excluding ^{educational component of} pre-elementary schools and nur-
14 series operated by a church or other nonprofit religious organization
15 that is exempt from federal taxation and does not receive state or
16 federal funding; pre-elementary schools in this paragraph means
17 schools for children ages three through five years when the schools'
18 primary function is educational;

19 * Sec. 2. AS 14.30.010(b)(1) is amended to read:

20 (1) is provided an academic education comparable to that
21 offered by the public schools in the area, either by

22 (A) attendance at a private school in which the teach-
23 ers are certificated according to AS 14.20.020;

24 (B) tutoring by personnel certificated according to
25 AS 14.20.020; [OR]

26 (C) except as provided in (D) of this paragraph,
27 attendance at a private school in which the average student
28 proficiency is not less than the average proficiency found in the
29 public schools in the area as measured by national achievement

1 tests; the ^{① State Bd. of Educ.} [department] with assistance from representatives of the
 2 private schools shall adopt [PROMULGATE] regulations defining the
 3 subject areas to be tested and the minimum average scores to be
 4 achieved; or

5 (D) attendance in an educational program operated in
 6 compliance with AS 14.45 by a church or other nonprofit religious
 7 organization that is exempt from federal taxation and does not
 8 receive state or federal funding;

9 * Sec. 3. AS 14.45 is amended by adding a new section to read:

10 Sec. 14.45.025. EXEMPTION FROM EDUCATION LAWS. A religious
 11 school that complies with this chapter is exempt from other provisions
 12 of state law and regulations relating to education except laws and
 13 regulations relating to health, fire safety, sanitation, immunization,
 14 and physical examinations.

15 * Sec. 4. AS 14.45.030 is amended to read:

16 Sec. 14.45.030. ATTENDANCE AND ANNUAL REPORTS REQUIRED. (a)
 17 Except as provided in (b) and (c) of this section, teachers [TEACHERS]
 18 and others in charge of private or denominational schools, ^{best notification} shall make
 19 regular monthly attendance reports and annual reports to the commis-
 20 sioner in the same manner as teachers and superintendents in the
 21 public schools.

22 * Sec. 5. As 14.45.030 is amended by adding new subsections to read:

23 (b) The parent or guardian of a child enrolled in a religious
 24 school that complies with this chapter shall file ^{all} annual ^{notice of} enrollment
 25 ^{in the religious school} [and attendance records] for the child with the public school superin-
 26 tendent for the area in which the child resides on a form provided by
 27 the public school superintendent. The form shall be signed by the
 28 parent and the chief administrative officer of the religious school
 29 and returned to the public school superintendent by the parent. The

^{religious school}
 [parent] shall notify the public school superintendent immediately if the child is no longer enrolled in or attending the religious school.

(c) A religious school that elects to comply with this chapter shall maintain monthly attendance records for each student enrolled in the school and shall operate on a regular schedule, excluding reasonable holidays and vacations, during at least ^{180 days} [nine calendar months] of the year.

* Sec. 6. AS 14.45 is amended by adding new sections to read:

Sec. 14.45.035. STANDARDIZED TESTING REQUIREMENTS. (a) A religious school that elects to comply with this chapter shall administer a nationally standardized test selected by the chief administrative officer of the religious school to all students enrolled in grades one, three, six, and nine at least once each school year.

(b) The nationally standardized test must measure achievement in English grammar, reading, spelling, and mathematics.

(c) A religious school shall maintain records of the results of the nationally standardized tests and the records shall be made available to the parent or guardian of the student and to authorized representatives of the state. ^{vis-a-vis written amendment by Hols}

Sec. 14.45.040. DEFINITION. In this chapter, "religious school" means a school operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding.

* Sec. 7. AS 44.27.020(1) is amended to read:

(1) administer the state's program of education at the elementary, secondary, and adult levels, including, but not limited to, programs of vocational education and training, vocational rehabilitation, library services, correspondence courses, adult basic education, and fire-service training, but not including degree

1 programs of postsecondary education or an educational program operated
2 in compliance with AS 14.45 by a church or other nonprofit religious
3 organization that is exempt from federal taxation and does not receive
4 state or federal funding;

5 * Sec. 8. AS 14.45.020 is repealed.
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Official Business

Alaska State Legislature

House of Representatives

Committee on Rules

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-3764
465-3765

LETTER OF INTENT

HB 357 "An Act relating to the regulation of religious schools."

The Rules Committee recognizes that operating a church school is an integral part of the free expression of religion and that schools operated by religious bodies are quite different from other private schools. Therefore, the committee's purpose in sending HB 357 to the floor and in urging its passage is to prevent possible church-state constitutional conflicts by protecting the fundamental rights of religious freedom of parents, children, and church schools in Alaska and, at the same time, to balance the state's interest in assuring that each child receives a good education. The committee specifically intends to exempt pre-elementary and nursery programs operated by religious organizations from the general supervision of the Departments of Education and of Health and Social Services.

The committee only intends to exclude from the purview of this bill those church schools that receive direct federal or state funds. This would not affect those schools that receive incidental benefits from government, such as fire or police protection, health care or other benefits to which all citizens are entitled.

Any church school that satisfies all the requirements of AS 14.45 would be exempt from any additional provision of law relating to education except those requirements of law relating to fire, health, and safety. While each church school would be subject to reasonable fire, health, and safety regulation, the Rules Committee intends to specifically limit health regulation to that regulation that is reasonably related to the state's interest in preventing and curing physical diseases. For example, the committee does not intend for the state to regulate minimum space requirements (except as it directly relates to the fire code), hours of attendance, or reasonable methods of discipline.

In summary, the Rules Committee Substitute for HB 357 balances the state's interest in ensuring that each child receives a good education with the constitutional right to religious freedom.

Respectfully submitted,

Rep. Jack Fuller
Rules Committee chairman

MEMORANDUM

State of Alaska

TO: Steve Hole
Administrator
Department of Education

DATE: June 10, 1983

FILE NO: 366-657-83

TELEPHONE NO: 465-3603

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: CSHB 357 (Rules)

By: ^{TJR} Thomas H. Robertson
Assistant Attorney General
Human Services-Juneau

This memorandum is written in response to our recent telephone conversation in which you asked whether language in CSHB 357 (Rules) which would exempt certain pre-elementary schools from supervision by your agency raises a question of equal protection under the law.

A substantial question exists as to whether this and other provisions of CSHB 357 (Rules) violate the equal protection clauses of the state and federal constitutions.

Section 1 of CSHB 357 (Rules) would exclude pre-elementary schools and nurseries operated by "a church or other nonprofit religious organization that is exempt from federal taxation and does not receive direct state or federal funding" from supervision by your agency under AS 14.07.020(8). Other sections of the bill would amend AS 14.30.010 which governs compulsory attendance and would exclude other educational programs operated by these organizations from regulation by the state. In effect, this bill would establish two categories of private schools, church related and not church related, and would provide for disparate treatment of each.

To the extent CSHB 357 (Rules) is intended to assure that your agency does not infringe first amendment protections, it is unnecessary. 1/ Your agency has no power to violate the

1/ The first amendment to the United States Constitution provides, in part, that Congress shall make no law "respecting an establishment of religion, or prohibiting the free exercise thereof". Similar language is contained in Article 1, sec. 4, of the Alaska Constitution.

constitutional rights. To the extent CSHB 357 (Rules) would go beyond first amendment protections, it raises a serious question of equal protection under the state and federal constitutions.

Equal protection analysis under either the state or federal constitutions requires an evaluation of the purpose of the legislation at issue. CSHB 357 (Rules) does not contain a statement of purpose and none, other than that of accommodating first amendment rights, is readily apparent. If as a factual matter sufficient reasons cannot be articulated to support a distinction between these categories of private schools, then a court would probably find this legislation to deny equal protection. 2/

In an opinion dated January 24, 1983, the Attorney General for the State of Arkansas addressed the constitutionality of a similar bill under consideration in that state. That opinion, a copy of which is attached, concludes that the bill unlawfully discriminates against children in religious child care facilities and the owners and operators of non-religious facilities. In addition, it concludes that the bill may impermissibly benefit religious organizations in violation of the First Amendment. Unless circumstances in this state require a different result, we would probably reach a similar conclusion if asked to undertake a more comprehensive analysis of this legislation.

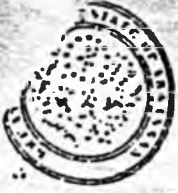
2/ Generally speaking, the Fourteenth Amendment to the United States Constitution requires that disparate treatment be supported by a rational basis unless a suspect classification (race, creed, etc.) or a fundamental right is involved, in which case it must be supported by a compelling state interest. In *State v. Erickson*, 574 P.2d 1 (Alaska 1978), the Alaska Supreme Court established a single standard for equal protection analysis under the Alaska Constitution. This standard, which is more demanding than the federal rational basis test, requires an evaluation of the purpose of the statute and, if the purpose is legitimate, a determination whether it is substantially furthered by the means chosen. Finally, the means must be balanced against the nature of any constitutional right which may be infringed.

Steve Hole
Department of Education
Our File 366-657-83

June 10, 1983
Page -3-

If you have additional questions, or desire further research in this area, please do not hesitate to contact this office.

THR:ja



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

STEVE CLARK
ATTORNEY GENERAL

January 24, 1983

OPINION NO. 83-15

The Honorable Joseph K. Mahony
The Honorable Robert L. McGinnis
State Representatives
1983 General Assembly
State Capitol
Little Rock, AR 72201

RE: House Bill 54

Gentlemen:

I am writing in response to your request for an opinion regarding the constitutionality of House Bill 54. An examination of the bill reveals an obvious concern that House Bill 54 is legally invalid as a violation of the equal protection provisions of the Fourteenth Amendment to the United States Constitution and Article 2, Section 3 of the Arkansas Constitution.

The Fourteenth Amendment states, in pertinent part, as follows:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. [Emphasis supplied]

These constitutional provisions have consistently been interpreted to strike down statutes which discriminate between different groups of citizens or businesses which are regulated by the same legislation.

That is to say, when the law attempts to regulate a business, industry or practice, it must do so on an equal basis to all the members of the regulated class unless there is a significant difference in the way the exempted class operates its business, industry or practice and the exemption is reasonably related to the purpose of the original legislation. Jacks v. State, 219 Ark. 392, 242 S.W.2d 704; Wematco Services, Inc. v. Gaddy, 272 Ark. 452, 616 S.W.2d 466, Rayco Construction Co., Inc. v. Vorsanger, 397 F.Supp. 1105; Milnot Co. v. Douglas, 452 F.Supp. 505. See also Milnot v. Arkansas State Board of Health, 388 F.Supp. 901 and Dicks v. Naff, Mayor, 255 Ark. 357.

The Honorable Joseph K. Mahony
The Honorable Robert L. McGinnis
January 21, 1983
Page Two

In the Rayco case the Court stated:

A state may validly differentiate between people or corporations on the basis of classifications providing that the state has legitimate and significant (in some contexts a "compelling") interest in the differentiation and provided that the classification is based on some reasonable and rational criteria or criteria; however, absent an appropriate state interest or absent rational and relevant standards of classification, state-imposed differentiation amounts to unconstitutional discrimination. [Emphasis supplied]

The exemption which H.B. 54 creates is the type of "classification" which these cases address.

Therefore unless the exemption can be justified because of differences in the operation of religious child care facilities as opposed to non-religious facilities this bill appears to discriminate, unlawfully, against not one but two classes of citizens; the children the Child Care Facility Review Board Act was intended to protect and the owners and operators of non-religious facilities.

Since there is no language in the bill indicating that children in these religious facilities are fed, supervised, etc. any differently from children in secular facilities and since there is no language in the bill indicating that children in the religious facilities are any less likely to be neglected, abused or left in hazardous circumstances than children in secular facilities there is no justification for denying to the children in these centers the protection of the state and forcing the owners of secular facilities to compete with unlicensed facilities who are operating the identical kind of business.

It is important to remember in this regard that the intent of the original act, as stated at Ark. Stat. Ann. §83-904(b), is the protection of children:

(B) In establishing requirements and standards for the granting, revoking, refusing, and suspending of a license for a Child Care Facility the Welfare Department [Child Care Facility Review Board] shall adopt such rules and regulations as will: promote the health, safety and welfare of children attending a Child Care Facility; promote safe, comfortable, and healthy physical facilities for the children who attend the Child Care Facility; insure adequate supervision of the children who attend the Child Care Facility, insure adequate supervision of the children by capable, qualified and healthy individuals; insure appropriate educational programs and activities within each Child Care Facility; and insure adequate and healthy food service where food service is offered by the Child Care Facility.

The Honorable Joseph K. Mahony
The Honorable Robert L. McGinnis
January 24, 1983
Page Three

With this in mind H.B. 54 demonstrates no rational, much less compelling state interest, in exempting facilities from licensure simply because they happen to receive no state or federal money and are associated with a religious organization.

The source of the facilities' funds and its association with a religious association simply does not appear to be connected in any way with whether or not these children deserve the same protection from abuse, neglect or hazardous circumstances as children in secular centers.

Likewise the source of the facilities' money and association with a religious organization does not appear to justify compelling a secular facility to spend the money and resources necessary to comply with the original act when the religious facilities operate the identical type of business enterprise.

Since there is no language in the original act which appears to authorize the Child Care Board to interfere with the religious beliefs of any church, this exemption seems irrelevant to any need to protect the First Amendment rights of religious groups.

However, if a religion's beliefs are manifested in practices which may threaten the safety and well being of children, then the state through its police power and the doctrine of *parens patriae* can and should lawfully discover and prevent such dangers. See Cude v. State, 237 Ark. 927, 377 S.W.2d 816.

In the Cude case the Arkansas Supreme Court overruled parents' religious objections to having children vaccinated, saying that the state's police power superceded the dangerous beliefs of parents which threaten the well being of the children. The Court quoting the United States Supreme Court in Prince v. Massachusetts, 321 U.S. 158, said:

The right to practice religion freely does not include liberty to expose the community or the child to communicable diseases or the latter to ill health or death.

. . . Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.

Again however, it is important to note that the intent of the original legislation has nothing whatsoever to do with parents' religious rights or the rights of a religious association but simply with the

The Honorable Joseph K. Mahony
The Honorable Robert L. McCinnis
January 24, 1983
Page Four

protection of all children, religious or not, in facilities which are religious or secular.

Therefore any argument that this exemption is necessary to protect the First Amendment rights of the prospectively exempt facilities is without support from any language in H.B.54.

In fact the bill itself appears that it may violate the doctrine of church/state separation by awarding an unjustifiable benefit to religious organizations not enjoyed by private facilities which operate identical enterprises.

Without a justifiable secular legislative purpose which neither advances or inhibits religion, the bill is, in fact also suspect from the point of view of the First Amendment. Romer v. Maryland, 426 U.S. 736, 96 S.Ct. 2337, 49 L.Ed.2d 179

Again, it is difficult to see, from the bill itself, a secular and neutral legislative purpose for exemption of only the religious facilities. Rather it appears that this legislation is clearly intended to further the alleged religious interests of certain denominations since there is no rational justification for the exemption in view of the legislative purpose quoted above.

The courts, in reviewing a challenge to this bill, can look behind the legislation into the history of the bill, something that has been done recently in McLean v. Board of Education, 529 F.Supp. 1255 (E.D. Ark. 1982), and Epperson v. Arkansas, 363 U.S. 97, 89 S.Ct. 260, 21 L.Ed. 2d 228 (1968).

Since the burden is on those defending a discrimination to make out a claim for justification (Wengler v. Druggist Mutual Insurance Co., 446 U.S. 142, 109 S.Ct. 1540, 61 L.Ed.2d 107) I can advise you that this bill presents no such justification and the state could therefore not carry that burden in a court action.

It is important to remember that:

1. Many children in the so-called religious centers are not members, nor are their parents, of the religious facility seeking exemption. So again the particular beliefs of the religious association are irrelevant to protecting the children at the facility. Circle H and Faith Christian homes recruit children from all over Arkansas regardless of the children's religion at the time of their arriving at these facilities. The Alamo foundation solicits new born babies from all over the nation totally disregarding any beliefs of the child.

The Honorable Joseph K. Mahony
The Honorable Robert I. McGinnis
January 24, 1983
Page Five

There is simply no rational justification for denying these children protection of state law because the institution they end up in, through no choice of their own, has a religious objection to licensure.

2. This exemption would not have protected Circle H Ranch because records at social services reflect it received well over \$100,000 in state and federal aid.

3. Many of these children come from broken homes, and have learning disabilities which require expert counseling and often special education which, as Judge Barrier found in the Circle H case, are not available at some of these facilities. These are children who need society's protection and assistance.

4. Health department inspections are inadequate to insure the safety of children because they do not have specific day care rules and regulations to address vital areas of the operation of a child care center such as playground safety, etc. The same is true with the Fire Marshal. Such problems were observed at the Alamo Foundation where an unfenced swimming pool and unfenced fishing pond were less than 100 feet from a playground serving 70 children.

5. Current criminal laws against child abuse are not adequate to protect children in these centers because: (1) These laws cannot operate without a report of abuse by a witness. At some facilities absolute loyalty is the rule and therefore it is unlikely that employees will file such a complaint; (2) Employees at other centers are not likely to report abuse because it may cost them their job; (3) Criminal statutes don't authorize closing the facility where abuse or neglect is practiced. They only allow prosecution of individuals. And if the only witnesses are children who are too young to testify, there is no case to take to a prosecutor although the abuse, unreported, is nonetheless occurring.

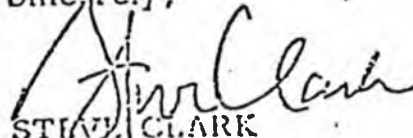
In conclusion, House Bill 54 is constitutionally suspect as being without rational justification and thus discriminates both against a large class of children and the owners and operators of secular facilities.

I am informed of the likely prospect of an immediate court challenge if the bill is enacted. In that eventuality, it is my judgment that the bill would be struck down as a violation of the constitutional provisions I have mentioned.

The Honorable Joseph K. Mahony
The Honorable Robert L. McGinnis
January 24, 1983
Page Six

If I may be of assistance in providing additional information on this or other proposed legislation, please do not hesitate to contact this office.

Sincerely,


STEVE CLARK
Attorney General

SC:mgv

SENATE AMENDMENT

By Josephson

To: _____ SENATE BILL No. _____

To: Committee substitute for HOUSE BILL No. 357 (RULES)

PAGE: 1 LINE: 9-18

Section 1. AS 14.07.020(8) is amended to read:

(8) [in cooperation with the Department of Health and Social Services,] exercise general supervision over public and private pre-elementary schools [and over the educational component of nurseries as defined in AS 47.35.080(4)] excluding the educational component of pre-elementary schools [and nurseries] operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive direct state or federal funding; pre-elementary schools in this paragraph means schools for children ages three through five years when the schools' primary function is educational;

HOUSE WESS
COMMITTEE MEETING
AGENDA

PRIVATE SCHOOLS,
PAROCHIAL SCHOOLS.

DATE: May 13, 1983

TIME: 1:00 p.m.

I. Call Meeting to Order

- A. Note Committee Members Present
- B. Welcome Those Observing
- C. Remind those wishing to testify to sign up, and those giving testimony to speak up and state their names.

II. Announce Legislation Under Consideration:

HB 357 An act relating to the regulation of religious schools. STATEWIDE TELLCONFERENCE

Other notes or reminders:

FULL CALENDAR NEXT WEEK

Alaska State Legislature

REP. MAE TISCHER
CHAIRMAN

REP. MILK FRITZ
CO-CHAIRMAN

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

House of Representatives

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

MEMBERS:
REP. MIKE MILLER
VICE CHAIRMAN
REP. BETTE CATO
REP. MIKE DAVIS
REP. PETER GOLL
REP. NILO KOPCEN

To: Chief Clerk

Date: 5/13/83

From: House HESS Committee Staff 

Re: Notice of Hearing/ Proposed CSHB 357

In addition to the HESS Committee's scheduled calendar for Monday, May 16, the Committee will take testimony in regard to the proposed CS for HB 357 (HESS) at 1.p.m. in room 112 of the Capitol Building.

Levy
5/20/83

Original sponsors: Fritz, Tischer,
Pestinger, et al

1. THE HOUSE

BY THE RULES COMMITTEE

CS FOR HOUSE BILL NO. 357 (Rules)
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of religious schools."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 14.07.020(8) is amended to read:

(8) in cooperation with the Department of Health and Social Services, exercise general supervision over public and private pre-elementary schools and over the educational component of nurseries as defined in AS 47.35.080(4) excluding pre-elementary schools and nurseries operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive direct state or federal funding; pre-elementary schools in this paragraph means schools for children ages three through five years when the schools' primary function is educational;

* Sec. 2. AS 14.30.010(b)(1) is amended to read:

(1) is provided an academic education comparable to that offered by the public schools in the area, either by

(A) attendance at a private school in which the teachers are certificated according to AS 14.20.020;

(B) tutoring by personnel certificated according to AS 14.20.020; [OR]

(C) except as provided in (D) of this paragraph, attendance at a private school in which the average student proficiency is not less than the average proficiency found in the public schools in the area as measured by national achievement

CS deletes
"the educational
component of"

1 tests; the board of education [DEPARTMENT] with assistance from
2 representatives of the private schools shall adopt [PROMULGATE]
3 regulation, defining the subject areas to be tested and the
4 minimum average scores to be achieved; or

5 (D) attendance in an educational program operated in
6 compliance with AS 14.45 by a church or other nonprofit religious
7 organization that is exempt from federal taxation and does not
8 receive direct state or federal funding;

9 * Sec. 3. AS 14.45 is amended by adding a new section to read:

10 Sec. 14.45.025. EXEMPTION FROM EDUCATION LAWS. A religious
11 school that complies with this chapter is exempt from other provisions
12 of state law and regulations relating to education except laws and
13 regulations relating to health, fire safety, sanitation, immunization,
14 and physical examinations.

15 * Sec. 4. AS 14.45.030 is amended to read:

16 Sec. 14.45.030. ATTENDANCE AND ANNUAL REPORTS REQUIRED. (a)
17 Except as provided in (b) and (c) of this section, teachers [TEACHERS]
18 and others in charge of private or denominational schools shall make
19 regular monthly attendance reports and annual reports to the commis-
20 sioner in the same manner as teachers and superintendents in the
21 public schools.

22 * Sec. 5. AS 14.45.030 is amended by adding new subsections to read:

23 (b) The parent or guardian of a child enrolled in a religious
24 school that complies with this chapter shall file an annual notice of
25 enrollment in the religious school for the child with the public
26 school superintendent for the area in which the child resides on a
27 form provided by the public school superintendent. The form shall be
28 signed by the parent and the chief administrative officer of the
29 religious school and returned to the public school superintendent by

1 the parent. The religious school shall notify the public school
2 superintendent immediately if the child is no longer enrolled in or
3 attending the religious school.

4 (c) A religious school that elects to comply with this chapter
5 shall maintain monthly attendance records for each student enrolled in
6 the school, shall operate on a regular schedule, excluding reasonable
7 holidays and vacations, during at least 180 days of the year, and
8 shall make an annual report to the commissioner of the number of
9 students in each grade and the school calendar.

10 * Sec. 6. AS 14.45 is amended by adding new sections to read:

11 Sec. 14.45.035. STANDARDIZED TESTING REQUIREMENTS. (a) A
12 religious school that elects to comply with this chapter shall admin-
13 ister a nationally standardized test selected by the chief administra-
14 tive officer of the religious school to all students enrolled in
15 grades one, three, six, and nine at least once each school year.

16 (b) The nationally standardized test must measure achievement in
17 English grammar, reading, spelling, and mathematics.

18 (c) A religious school that elects to comply with this chapter
19 shall maintain records of the results of the nationally standardized
20 tests and the records shall be made available to the parent or guar-
21 dian of the student and to authorized representatives of the state.

22 Sec. 14.45.040. RECORDS. A religious school that elects to
23 comply with this chapter shall maintain adequate student records,
24 including records of immunizations, physical examinations, testing,
25 and courses taken at the religious school.

26 Sec. 14.45.045. DEFINITION. In this chapter, "religious school"
27 means a school operated by a church or other nonprofit religious
28 organization that is exempt from federal taxation and does not receive
29 direct state or federal funding.

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* Sec. 7. AS 44.27.020(1) is amended to read:

(1) administer the state's program of education at the elementary, secondary, and adult levels, including, but not limited to, programs of vocational education and training, vocational rehabilitation, library services, correspondence courses, adult basic education, and fire-service training, but not including degree programs of postsecondary education or an educational program operated in compliance with AS 14.45 by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive direct state or federal funding;

* Sec. 8. AS 14.45.020 is repealed.

Levv
5/13/83 ✓

Original sponsors: Fritz, Tischer,
Pestinger, et al

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 357 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the regulation of religious
7 schools."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 14.07.020(8) is amended to read:

10 (8) in cooperation with the Department of Health and Social
11 Services, exercise general supervision over public and private pre-
12 elementary schools and over the educational component of nurseries as
13 defined in AS 47.35.080(4) ^{educational component of} ~~excluding~~ pre-elementary schools and nur-
14 series operated by a church or other nonprofit religious organization
15 that is exempt from federal taxation and does not receive state or
16 federal funding; pre-elementary schools in this paragraph means
17 schools for children ages three through five years when the schools'
18 primary function is educational;

19 * Sec. 2. AS 14.30.010(b)(1) is amended to read:

20 (1) is provided an academic education comparable to that
21 offered by the public schools in the area, either by

22 (A) attendance at a private school in which the teach-
23 ers are certificated according to AS 14.20.020;

24 (B) tutoring by personnel certificated according to
25 AS 14.20.020; [OR]

26 (C) except as provided in (D) of this paragraph,
27 attendance at a private school in which the average student
28 proficiency is not less than the average proficiency found in the
29 public schools in the area as measured by national achievement

State Bd. of Educ.

1 tests; the ~~department~~ with assistance from representatives of the
2 private schools shall adopt [PROMULGATE] regulations defining the
3 subject areas to be tested and the minimum average scores to be
4 achieved; or

5 (D) attendance in an educational program operated in
6 compliance with AS 14.45 by a church or other nonprofit religious
7 organization that is exempt from federal taxation and does not
8 receive state or federal funding;

9 * Sec. 3. AS 14.45 is amended by adding a new section to read:

10 Sec. 14.45.025. EXEMPTION FROM EDUCATION LAWS. A religious
11 school that complies with this chapter is exempt from other provisions
12 of state law and regulations relating to education except laws and
13 regulations relating to health, fire safety, sanitation, immunization,
14 and physical examinations.

15 * Sec. 4. AS 14.45.030 is amended to read:

16 Sec. 14.45.030. ATTENDANCE AND ANNUAL REPORTS REQUIRED. (a)
17 Except as provided in (b) and (c) of this section, teachers [TEACHERS]
18 and others in charge of private or denominational schools ^{*including non-religious schools as provided in this chapter*} shall make
19 regular monthly attendance reports and annual reports to the commis-
20 sioner in the same manner as teachers and superintendents in the
21 public schools.

22 * Sec. 5. As 14.45.030 is amended by adding new subsections to read:

23 (b) The parent or guardian of a child enrolled in a religious
24 school that complies with this chapter shall file ^{*an*} ^{*notice of*} annual enrollment
25 ^{*by the religious school*} ~~and attendance records~~ for the child with the public school superin-
26 tendent for the area in which the child resides on a form provided by
27 the public school superintendent. The form shall be signed by the
28 parent and the chief administrative officer of the religious school
29 and returned to the public school superintendent by the parent. The

religious school

1 ~~parent~~ shall notify the public school superintendent immediately if
2 the child is no longer enrolled in or attending the religious school.

3 (c) A religious school that elects to comply with this chapter
4 shall maintain monthly attendance records for each student enrolled in
5 the school and shall operate on a regular schedule, excluding reason-
6 able holidays and vacations, during at least ~~nine calendar months of~~
7 *180 days of the year*
~~the year.~~

8 * Sec. 6. AS 14.45 is amended by adding new sections to read:

9 Sec. 14.45.035. STANDARDIZED TESTING REQUIREMENTS. (a) A
10 religious school that elects to comply with this chapter shall admin-
11 ister a nationally standardized test selected by the chief administra-
12 tive officer of the religious school to all students enrolled in
13 grades one, three, six, and nine at least once each school year.

14 (b) The nationally standardized test must measure achievement in
15 English grammar, reading, spelling, and mathematics.

16 (c) A religious school shall maintain records of the results of
17 the nationally standardized tests and the records shall be made avail-
18 able to the parent or guardian of the student and to authorized rep-
19 resentatives of the state.

20 Sec. 14.45.040. DEFINITION. In this chapter, "religious school"
21 means a school operated by a church or other nonprofit religious
22 organization that is exempt from federal taxation and does not receive
23 state or federal funding.

24 * Sec. 7. AS 44.27.020(1) is amended to read:

25 (1) administer the state's program of education at the
26 elementary, secondary, and adult levels, including, but not limited
27 to, programs of vocational education and training, vocational reha-
28 bilitation, library services, correspondence courses, adult basic
29 education, and fire-service training, but not including degree

Section 6. AS 14.45.030 Sentence addition to paragraph (c).

Such schools shall report annually the number of students enrolled in each grade and provide a copy of the school calendar to the department.

Such schools shall maintain adequate student records, including all information required of public school ^{attendance} or immunization, physical examinations, testing and courses taken while in attendance at the religious school.

1 programs of postsecondary education or an educational program operated
2 in compliance with AS 14.45 by a church or other nonprofit religious
3 organization that is exempt from federal taxation and does not receive
4 state or federal funding;

5 * Sec. 8. AS 14.45.020 is repealed.
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HB 357 TITLE & SPONSOR SUMMARY

12:15 5/21/83 PAGE 1 OF 2

AMENDED TITLE:

AN ACT RELATING TO THE REGULATION OF RELIGIOUS SCHOOLS

PRIME SPONSOR: FRITZ.

CO-SPONSORS: TISCHER, FESTINGER, FURNACE, WARD, FLOOD.

CURRENT STATUS: 5/19/83 IN (H) RULES

HB 357 HOUSE ACTION

12:15 5/21/83 PAGE 2 OF 2

LEGISLATIVE ACTION

DATE SEQ PAGE

04/14/83 01 0861
05/19/83 02 1426
05/19/83 03 1427

FIRST READING -- COMMITTEE REPORTS
HESS -- CS05
HESS F/NOTE EQUALS ZERO
RULES

**** ** **

*** ** *

REF. MAE TISCHER
CO-CHAIRMAN

REP. MILO FRITZ
CO-CHAIRMAN



MEMBERS:
REP. MIKE MILLER
VICE CHAIRMAN
REP. BETTE CATO
REP. MIKE DAVIS
REP. PETER GOLL
REP. NILO KOPONEN

House of Representatives

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

M E M O R A N D U M

TO: House HESS Committee DATE: May 12, 1983

FROM: Linda Otey, Committee Staff

RE: Summary/ HB 357 "An Act relating to the regulation of religious schools"

Enclosed is material that has been gathered in an attempt to more clearly understand the issue of 'de-regulation' of church schools while maintaining some monitoring of the constitutional mandate to provide for public education. A sectional analysis of the bill has been provided by Legislative Counsel. He suggests that HB 357, as written, is probably unconstitutional with respect to the equal protection clauses of the State & Federal Constitutions.

"The bill exempts certain private schools from requirements that apply to all other private schools..."

With the understanding of the desire and need to resolve this issue legislatively, staff has contacted Ms. Patricia Lines, Director of Law & Education Center of the Education Commission of the States (ECS), Denver, Colorado. Ms. Lines has been working on this issue nation-wide and is extremely well versed in the objectives it encompasses. Her article, State Regulation of Private Education is enclosed for your review. Ms. Lines has been very helpful and has emphasized the need for legislative resolve through investigation of current regulation as well as the interest and need for religious school de-regulation and how best the two goals can work together. Ms. Lines also suggested that it would be in the best interest of expeditious and sound legislation for the issue to be dealt with away from the political arena; allowing each interest room for rational communication and resolution.

This issue is not easily addressed as it actually raises three constitutional issues:

- 1). Separation of Church & State - First Amendment, U.S. Constitution
- 2). Equal Protection Clause - Fourteenth Amendment, U.S. Const. & Art. 1, Sec. 1, Ak. Const.
- 3). Providing Public Education - Art 7, Sec 1, Ak. Const. & U.S. Const.

With the advice of our Legislative Counsel, in approaching the Alaska Statutes for revision, these three issues must be carefully meshed in order to be effectively implemented. A proposed Committee Substitute will be forthcoming.

folder content:

left
bill & statutes
Pre-Elem Regulations
Fiscal Note Ø

right
Summary
Sectional/Levy
Pat Lines Article

National Comparison
ECS Report
Comments/Glover