

HB

514

COMMITTEE REPORT

HOUSE

(7)

FURTHER:

1/14/84

Date: January 23, 1984

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had HB 514

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

under consideration and recommends:

do pass do not pass

do pass with attached amendments(s)

replace with CS for HB 514 (HBSS) same title

and recommends That the CS Pass new title

AND attaches a "Letter of Intent" New Fiscal Note

reports it back without recommendation Zero Fiscal Note Attached

referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Karl A. Veitch
M.W. Miller

Terry M. ...

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Mike ...

CHAIRMAN

Levy
1/18/84 ✓

BY TISCHER, FURNACE, LINDAUER, BARNES,
SZYMANSKI, ABOOD, BETTISWORTH, BUSSELL,
CATO, COWDERY, DUNCAN, FLOOD, FRITZ,
FULLER, HERRMANN, LARSON, LISKA, MARTIN,
M.M.MILLER, M.W.MILLEK, PESTINGER,
PHILLIPS, RINGSTAD, SHULTZ, WARD AND HAYES

1 IN THE HOUSE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 514

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL.

6 For an Act entitled: "An Act relating to the regulation of private
7 schools."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. PURPOSE. In conformity with the fundamental right to
10 freedom of religion guaranteed by the constitutions of the United States
11 and the State of Alaska and in recognition of the right of parents to
12 choose to have their children educated in private schools, it is the
13 purpose of this Act

14 (1) to ensure that in matters of education by religious organ-
15 izations the state shall not control or interfere with the rights of con-
16 science and religious liberty;

17 (2) to further the state's legitimate interest in ensuring the
18 quality of all education, including private education, and

19 (3) ~~(to allow diversity in education by)~~ ^{STATE} ~~encouraging~~ ^(minimizing regulation of) private
20 education.

State involvement in the affairs of

21 * Sec. 2. AS 14.07.020 is amended to read:

22 Sec. 14.07.020. DUTIES OF THE DEPARTMENT. The department shall

23 (1) exercise general supervision over the public schools of
24 the state except the University of Alaska;

25 (2) study the conditions and needs of the public schools of
26 the state and adopt or recommend plans for the improvement of the
27 public schools;

28 (3) provide advisory and consultative services to all
29 public school governing bodies and personnel;

1 (4) prescribe by regulation a minimum course of study for
2 the public schools;

3 (5) establish, in coordination with the Department of
4 Health and Social Services, a program for the continuing education of
5 children who are held in detention facilities in the state during the
6 period of detention;

7 (6) accredit those public schools which meet accreditation
8 standards prescribed by regulation by the department; these regula-
9 tions shall be adopted by the department and presented to the legisla-
10 ture during the first 10 days of any regular session, and become
11 effective 45 days after presentation or at the end of the session,
12 whichever is earlier, unless disapproved by a resolution concurred in
13 by a majority of the members of each house;

14 (7) prescribe by regulation, after consultation with the
15 state fire marshal and the state sanitarian [DEPARTMENT OF HEALTH AND
16 SOCIAL SERVICES], standards that will assure healthful and safe con-
17 ditions in the public and private schools of the state including a
18 requirement of physical examinations and immunizations in private
19 pre-elementary schools; the standards for private schools may not be
20 more stringent than those for public schools;

21 (8) [IN COOPERATION WITH THE DEPARTMENT OF HEALTH AND
22 SOCIAL SERVICES,] exercise general supervision over public [AND PRI-
23 VATE] pre-elementary schools [AND OVER THE EDUCATIONAL COMPONENT OF
24 NURSERIES AS DEFINED IN AS 47.35.080(4)]; pre-elementary schools in
25 this paragraph means schools for children ages three through five
26 years when the schools' primary function is educational;

27 (9) provide accredited elementary and secondary correspon-
28 dence study programs available to any Alaskan through a centralized
29 office of correspondence study;

1 (10) accredit private [ELEMENTARY AND SECONDARY] schools
2 which request accreditation and which meet accreditation standards
3 prescribed by regulation by the department; nothing in this paragraph
4 authorizes the department to require religious or other private
5 schools to be licensed;

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

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

18 (13) administer the grants awarded under AS 14.11.020.

19 * Sec. 3. AS 14.30.010(b) is amended to read:

20 (b) This section does not apply if a child

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

23 (A) attendance at a private school in which the teach-
24 ers are certificated according to AS 14.20.020;

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

27 (C) attendance at an educational program operated in
28 compliance with AS 14.45.100 - 14.45.140 by a religious or other
29 private school [ATTENDANCE AT A PRIVATE SCHOOL IN WHICH THE

1 AVERAGE STUDENT PROFICIENCY IS NOT LESS THAN THE AVERAGE PROFI-
2 CIENCY FOUND IN THE PUBLIC SCHOOLS IN THE AREA AS MEASURED BY
3 NATIONAL ACHIEVEMENT TESTS; THE DEPARTMENT WITH ASSISTANCE FROM
4 REPRESENTATIVES OF THE PRIVATE SCHOOLS SHALL PROMULGATE REGULA-
5 TIONS DEFINING THE SUBJECT AREAS TO BE TESTED AND THE MINIMUM
6 AVERAGE SCORES TO BE ACHIEVED];

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

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

10 (4) is in the custody of a court or law enforcement author-
11 ities;

12 (5) is temporarily ill or injured;

13 (6) has been suspended or denied admittance according to
14 AS 14.30.045;

15 (7) resides more than two miles from either a public school
16 or a route on which transportation is provided by the school authori-
17 ties, except that this subsection does not apply if the child resides
18 within two miles of a federal or private school which the child is
19 eligible and able to attend;

20 (8) is excused by action of the school board of the dis-
21 trict at a regular meeting or by the district superintendent subject
22 to approval by the school board of the district at the next regular
23 meeting;

24 (9) has completed the 12th grade;

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

1 (11) is equally well-served by an educational experience
2 approved by the school board as serving the child's educational inter-
3 ests despite an absence from school, the request for excuse is made in
4 writing by the child's parents or guardian, and approved by the prin-
5 cipal or administrator of the school that the child attends.

6 * Sec. 4. AS 14.45.030 is amended to read:

7 Sec. 14.45.030. NON-EXEMPT SCHOOLS [ATTENDANCE AND ANNUAL RE-
8 PORTS REQUIRED]. Teachers and others in charge of religious or other
9 private [OR DENOMINATIONAL] schools not operated in compliance with
10 AS 14.45.100 - 14.45.140 are not exempt from laws and regulations
11 relating to education. Non-exempt schools shall make regular monthly
12 attendance reports and annual reports to the commissioner in the same
13 manner as teachers and superintendents in the public schools.

14 * Sec. 5. AS 14.45 is amended by adding new sections to read:

15 ARTICLE 2. EXEMPT RELIGIOUS AND OTHER PRIVATE SCHOOLS.

16 Sec. 14.45.100. EXEMPTION. A religious or other private school
17 that complies with AS 14.45.100 - 14.45.140 is exempt from other
18 provisions of law and regulations relating to education except law and
19 regulations relating to physical health, fire safety, sanitation,
20 immunization, and physical examinations.

21 Sec. 14.45.110. REQUIREMENTS OF EXEMPT SCHOOLS. (a) The parent
22 or guardian of a child enrolled in a religious or other private school
23 that complies with AS 14.45.100 - 14.45.140 shall file an annual
24 notice of enrollment in the school for the child with the local public
25 school superintendent for the area in which the child resides on a
26 form provided by the department. The form shall be signed by the
27 parent or guardian and the chief administrative officer of the school
28 and returned to the local public school superintendent by the parent
29 or guardian. The school shall notify the local public school

1 superintendent within a reasonable time if the child is no longer
2 enrolled in or attending the school.

3 (b) A religious or other private school that elects to comply
4 with AS 14.45.100 - 14.45.140 shall maintain monthly attendance re-
5 cords for each student enrolled in the school, shall operate on a
6 regular schedule, excluding reasonable holidays and vacations, during
7 at least 180 days of the year, and shall make an annual report to the
8 commissioner of the number of students in each grade and the school
9 calendar.

10 Sec. 14.45.120. STANDARDIZED TESTING REQUIREMENTS. (a) A
11 religious or other private school that elects to comply with AS 14.-
12 45.100 - 14.45.140 shall administer a nationally standardized test
13 selected by the chief administrative officer of the school to all
14 students enrolled in grades four, six, and eight at least once each
15 school year.

16 (b) The nationally standardized test must measure achievement in
17 English grammar, reading, spelling, and mathematics.

18 (c) A religious or other private school that elects to comply
19 with AS 14.45.100 - 14.45.140 shall maintain records of the results of
20 the nationally standardized tests and the records shall be made avail-
21 able to the parent or guardian of the student. Each school shall make
22 composite test results for the school available annually to an autho-
23 rized representative of the department. The composite test results of
24 a religious or other private school operated in compliance with
25 AS 14.45.100 - 14.45.140 are not public information unless each public
26 school

27 (1) is also required to administer a nationally standard-
28 ized test that measures achievement in English grammar, reading,
29 spelling, and mathematics; and

1 (2) the composite test results for each public school are
2 public information.

3 Sec. 14.45.130. RECORDS. (a) A religious or other private
4 school that elects to comply with AS 14.45.100 - 14.45.140 shall
5 maintain permanent student records reflecting immunizations, physical
6 examinations, standardized testing, academic achievement, and courses
7 taken at the school.

8 (b) The chief administrative officer of a school that elects to
9 comply with AS 14.45.100 - 14.45.140 shall certify under oath to the
10 department that the records required under (a) of this section are
11 being maintained.

12 Sec. 14.45.140. DEFINITION. In this chapter

13 (1) "religious school" means a private school operated by a
14 church or other religious organization that does not receive direct
15 state or federal funding.

16 * Sec. 6. AS 14.45.020 is repealed.



• ALASKA COUNCIL OF SCHOOL ADMINISTRATORS •
326 Fourth St., Suite #510 Juneau, Alaska 99801 586-9702

an organization of Alaskan School Administrators

January 24, 1984

The Honorable Mae Tischer
House of Representatives
Chairman, Health, Education
and Social Services
Pouch V
Juneau, AK 99811



Dear Representative Tischer:

The Alaska Council of School Administrators would like to go on record as supporting H.B. 514 as amended. We are particularly pleased that the bill calls for a process of notifying local school districts about enrolled or non-enrolled students as found in Sec. 14.45.110. This bill enables the chief administrative officer of a district to fulfill his requirements under the compulsory attendance law AS Sec. 14.30.030.

Once again, we support the bill as written and urge its adoption.

Sincerely,

Don MacKinnon
Executive Secretary

DM:clc



American Association of University Women
Alaska State Division

Susan R. Clark, State Legislative
Chair
1109 C Street, Juneau, Ak. 99801
(907) 586-6952

23 January 1984

The Alaska Division of AAUW would like to go on record in support of an amendment to HB 519/SB 354, relating to the regulation of private schools. On page two of the bill (in Sec. 2. AS 14.07.020.) we would recommend that (8) read as follows: "...pre-elementary schools in this paragraph means schools for children ages three through five years when the school's primary function is educational and the program operates for four or fewer hours a day." Of specific concern to us is the health and safety of pre-elementary children ages 3 through 5 who spend from five to 10 or more hours daily in care outside their home.

Without this ammendment a loophole is created or rather maintained in Alaska statute that permits any program offering care to children up to 10 hours or more a day to exempt itself from health and safety regulations governing all Alaskan day care centers - even though that program is not functionally different from a day care program. The Dept. of Education has been called to task over the last several years by both the State Division of Internal Audit and the Federal Office of Child Development for the lack of a clear definition. Says the latter: "Your statute is indeed weak, allowing for confusion and almost any interpretation..." The Dept. audit found that "neither of the statutes [D.O.E.'s wording nor D.H.S.S.'s AS 47.35.010-80] set criteria nor define what is to be considered a primarily educational facility versus a child care facility;" and "because primarily educational has not been defined, neither the regulator Departments, the facilities themselves, nor the public has a positive definition to use in deciding whether or not a program is a preschool or daycare program. As a result, any facility may choose to be classified as a preschool, and avoid the requirement to comply with daycare standards."

One of the issues involved here is that education of pre-elementary children is different than the academic emphasis of elementary education, due to shorter attention spans, the need for more physical movement (and the need for physical rest), and the underlying necessity of children needing to learn pre-academic skills. Goals for a pre-schooler are different than those for an older child, and Early Childhood educators set out the following as desirable outcomes of a preschool education:

- a. Development of a positive self-concept, a sense of self-worth that comes from experiencing success, and a growing awareness of one's strengths as well as one's weakness.
- b. Achievement of independence in decision making and a sense of mastery over one's environment (buttons, bows and zippers...); plus an achievement of mutual interdependence - a sense of responsibility for self and others within a community or group.
- c. Movement from preoccupation with one's own biological and

- psychological needs toward involvement in outside interests and activities; finding pleasure from human interaction; seeking problems and finding satisfaction in solving them.
- d. Internalizing the concepts of problem solving abilities.
 - e. Coping with change and wider relationships.

Parents overwhelmingly want the option of an enrichment program for their children - the inclusion of life-expanding experiences not normally available in the home - and early enrichment has been shown to be important to the full development of all types and classes of children. Because of these factors all quality childcare programs at the pre-elementary level have (and all programs are encouraged to have) educational components teaching the basic life skills of self-sufficiency, socialization, and basic cognitive skills. Parents and community are no longer willing to accept custodial childcare or "warehousing" of kids as acceptable. Thus based on educational content there is no functional difference between a full day "preschool" and a good day care center. In fact in the D.O.E. audit, "of the 19 daycare programs surveyed, 18 stated they offered a preschool program." Ironically in Alaska while parents are lured by the term "preschool" into thinking they are doing better by their children, the standards for preschools are considerably lower than for daycare centers. [See attachment for comparison.]

When a young child is in care for all day every day, the program ceases to be solely a "school" and must include attention to nutritional needs, rest, staff health, adequate supervision with enough staff to attempt to meet the individual needs of each child, and enough space to meet the need to be physically active. Quality childcare is commonly described in national studies as having a tight child/staff ratio (a small number of children to each staff member). Safety in emergencies is a factor, but in normal times children under five need more individual attention than they will ever need at any other time. To form strong and positive self-concept, children need to be listened to, supported and encouraged. A large number of children can be tolerated in "school"-like situations for short periods during the day when activities are highly structured, but the emphasis must necessarily be on control. On a full time basis that can contribute to degrees of "maternal deprivation" resulting from the lack of a strong, rewarding relationship in the early years with a single close adult. "Preschools" have no child/staff ratio requirements. Similarly "pre-schools" have no minimum space requirements although the D.O.E. audit pointed out that adequate space is "absolutely necessary to ensure a quality, developmentally-orientated child care program":

"the higher the quality of space in a center, the more likely were teachers to be sensitive and friendly in their manner toward children, to encourage children in their self-chosen activities and to teach consideration for the rights and feelings of self and others. Where spatial quality was low, children were less likely to be involved and interested, were more likely to exhibit aggressive behavior, and teachers more likely to be neutral and insensitive in their manner, to use large amounts of guidance and restriction, and to teach arbitrary rules of social living."

There can be a workable definition of "pre-elementary school". Most legitimate pre-schools operate from two and a half to three

hours a day, as do most kindergartens for 6 year olds. Even elementary and high school kids do not attend school longer than about 6 hours a day, yet we permit three year olds to attend "school" 10 hours a day. We expect pre-schools to offer a fairly highly structured program for children and often the child/staff ratio is large (20 or more youngsters to 1 adult), but on a short time basis this can be acceptable. Beyond four hours the needs of small children demand more nurturing and less structured care, more space and less control, provision for a nutritional meal and snacks, a time for rest and naps, and the assurance that staff are not carriers of T.B., and assurance that an emergency plan is operable. After four hours children need more individual attention.

All 50 states regulate full-day child care, though in many states it took a tragedy to enact licencing laws. Without this amendment, Alaska is the only state not regulating full day programs which are functionally identical to day care centers. The results are a "risk to children", says the D.O.E. audit, for "programs quickly call themselves pre-elementary schools when they learn that is a means of escaping regulations." Please don't let tragedy have to happen first, before we correct what no other state will tolerate.

Preschool Standards are Lower
Than Daycare Standards

In Alaska, the Department of Education's standards for preschools are lower than the Department of Health and Social Services standards for daycare centers. For example, the only preschool standard equal to daycare standards is the immunization standard as shown in the following table.

COMPARISON OF DAYCARE AND PRESCHOOL STANDARDS

<u>STANDARD</u>	<u>DAYCARE</u>	<u>PRESCHOOLS</u>
License Renewal	Annual	5 yrs.
Agency Review	Annual	5 yrs.
Staff Pupil Ratio	1-10	no standard
** Indoor Space	35 sq. ft.per child	no standard
Outdoor space	75 sq. ft.per child	no standard
Fire Inspection	Annual	5 years
Sanitation Inspection	Annual	5 years
Health Program	required	no standard
Prone Rest	required	no standard
Immunizations	required	required
Nutrition Program	required	no standard
* Corporal Punishment	regulated	no standard

The Department of Health and Social Services also requires that daycare programs provide opportunities and experiences to promote the individual child's physical, emotional, social and intellectual growth, as outlined below:

- opportunities for balance of active/quiet play, group and individual, and indoor and outdoor play;
- opportunities for individual self expression in conversation, imaginative play and creative expressions;
- use of games, toys, books, sand, puzzles, for intellectual and social development;
- walking excursions/field trips; and
- equipment and furniture be of sufficient quality and quantity and appropriate to a child's use.

* The regulation reads: "Satisfactory compliance with this subsection requires that ... (7) caregivers not use any form of corporal punishment unless otherwise approved in writing by the parent of the child, and that they not use any other technique which is humiliating, shaming, frightening, or otherwise damaging to a child."

** "Several studies have found that most social involvement appears to occur at medium density (35-50 sq. ft. per child), while aggressiveness occurs at higher densities (below 35 sq. ft.) and random behavior occurs in large undifferentiated settings (over 50 sq. ft.)."

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 20, 1984

SUBJECT: Sectional analysis of CS HB 514 (HESS)

TO: Representative Mae Tischer
Chairman, House HESS Committee

FROM: Keith B. Levy *KBL*
Legislative Counsel

You have requested a sectional analysis of CS HB 514 (HESS), "An Act relating to the regulation of private schools." The main thrust of the bill is to allow religious and other private schools to opt out of the general laws and regulations applicable to private schools if they agree to comply with certain minimal requirements.

Section 1 states that the purpose of the bill is to guarantee that the state will not interfere with the constitutional right of freedom of religion while at the same time ensuring the quality of all education in the state and minimizing the the regulation of private education.

Section 2 amends the duties of the Department of Education with respect to private education (AS 14.07.020). It provides that the department will consult with the state fire marshall and the state sanitarian rather than the Department of Health and Social Services on matters of health and safety (AS 14.07.020(7)). It clarifies that the department must require physical examinations and immunizations in private pre-elementary schools (AS 14.07.020(7)). Section 2 also provides that the department is no longer responsible for the general supervision of private pre-elementary schools and nurseries. Supervision over public pre-elementary schools will no longer be done in cooperation with the Department of Health and Social Services (AS 14.07.020(8)). Finally, section 2 makes clear that the department may provide voluntary accreditation for any private school that requests it, although the department is not authorized to require private schools to be licensed (AS 14.07.020(10)).

Section 3 amends the state's compulsory education law (AS 14.30.010) to provide that attendance at a school operating in compliance with AS 14.45 (see section 5, below) satisfies the compulsory education requirements.

Section 4 provides that a private school that does not choose to comply with AS 14.45 (see section 5, below), is not exempt from other laws and regulations relating to education and must make attendance reports in the same manner as public schools.

Section 5 provides the minimum requirements a religious or other private school must meet if it elects to be exempt from other provisions of law and regulations. However, even these schools are subject to laws and regulations relating to physical health, fire safety, sanitation, immunization, and physical examinations (AS 14.45.100).

The parent or guardian of a child enrolled in an exempt school must file an annual notice of enrollment with the local public school superintendent on a form signed by the school administrator and the parent (AS 14.45.110(a)). The school must notify the local public school superintendent if the child is no longer attending or enrolled in the school. The exempt school must maintain monthly attendance records, operate on a regular schedule of at least 180 days, and report to the commissioner of education annually the number of students enrolled in each grade and the school calendar (AS 14.45.110(b)).

An exempt school must also administer a nationally standardized test to all students in grades four, six, and eight at least once each school year (AS 14.45.120(a)). The test must measure achievement in English grammar, reading, spelling, and mathematics (AS 14.45.120(b)). The school must maintain records of the results of these tests and make them available to the parent or guardian of the student. The school is required to make composite test results available annually to an authorized representative of the Department of Education, but these results are not public information unless each public school is subject to similar testing requirements, the result of which are also public (AS 14.45.120(c)).

The exempt schools are also required to maintain permanent student records reflecting immunizations, physical examinations, standardized testing, academic achievement, and

Representative Mae Tischer
Page 3
January 20, 1984

courses taken at the school. The administrator of the school must certify under oath that these records are being maintained (AS 14.45.130). Finally, "religious school," as used in these sections, is defined as a private school operated by a church or other religious organization that does not receive direct state or federal funding (AS 14.45.140).

It should be kept in mind that these provisions are not mandatory unless the private school chooses to exempt itself from other laws and regulations relating to education. Also, this option is available to all private schools, religious and otherwise.

KBL:ojb
J2/057

To: Legislators and interested others

From: League of Women Voters, AAUW (American Association of University Women), NAEYC (National Association for the Education of Young Children), the Alaska Women's Lobby

Re: SB 354, HB 514 An Act relating to the regulation of private schools.

Requesting: An ammendment defining the term "pre-elementary school" in Sec. 2. AS 14.07.020. (8)..."pre-elementary schools is this paragraph means schcols for children ages three through five years when the schools' primary function is educational and the program operates for four or fewer hours per day."

Problem: Without this ammendment a loophole is created in Alaska statute that permits any program offering care to children up to 10 hours or more a day to exempt itself from health and safety regulations governing all Alaskan day care centers - even though that program is not functionally different from a day care program.

Issues: (1) Education of pre-elementary children is different than the academic emphasis of elementary education, due to shorter attention spans and the need for more physical movement.

(2) All quality childcare programs at the pre-elementary level have educational components which include teaching basic life skills including self-sufficiency, socialization, and basic cognitive skills. Based on content there is no functional difference between a full day "pre-school" and a good day care center.

(3) When a young child is in care for all day every day, the program ceases to be solely a "school" and must include attention to nutritional needs, health of the staff, supervision with at least one staff person to 10 pre-schoolers so that the staff can attempt to meet the individual needs of each child, and enough space to meet the needs to be physically active.

(4) Most legitimate pre-schools operate from two and a half to four hours a day. Even kindergarten limits 6 year olds to two and a half to three hours. Elementary and high school kids attend only 6 hours, yet we permit a three year old to attend "school" 10 hours a day!

For more information call:

L.W.V.	Paula Ziegler	586-9439/586-2660 (h)
AAUW	Susan R. Clark	586-6952
NAEYC	Marjorie Fields	789-4408/789-0109 (h)
Ak. W.L.	Jana Varnati	364-3487 (h)

THE DEPARTMENT OF EDUCATION NEEDS TO
IMPROVE MANAGEMENT OF PRESCHOOL PROGRAMS

FEBRUARY 1982

STATE OF ALASKA
OFFICE OF THE GOVERNOR
DIVISION OF INTERNAL AUDIT



SUMMARY

The Department of Education is responsible for preschool programs in the State of Alaska. There are at least 185 early childhood programs in the state that provide preschool services.

This report shows that the Department of Education needs to better manage preschools, and needs to define which early childhood programs should be classified as preschools. The report also shows that the Department needs to set standards for preschools.

BETTER MANAGEMENT OF PRESCHOOL PROGRAMS IS NEEDED

The Department has certified only 28 early childhood programs as preschools, and has monitored even fewer. Historically, the Department has placed little emphasis on preschools. In addition, deciding which early childhood programs actually are preschools is difficult because the Department has not provided a definition of preschools. The lack of a definition causes confusion for those attempting to manage other child care programs.

STANDARDS FOR PRESCHOOLS SHOULD BE IMPROVED

The Department has not developed adequate preschool standards. And, although Alaska Statutes require that the Department of Education cooperate with the Department of Health and Social Services in regulating preschools, there has been little cooperation. Inadequate standards lead to inconsistent care for similar populations in preschool and daycare centers, and lessens the value of the preschool certification process.

RECOMMENDATIONS

To assure that the Department of Education meets their management responsibilities for preschools, we recommend the Commissioner require that:

- preschool programs in Alaska are regulated; and
- preschool programs are monitored to assure compliance with requirements.

To help eliminate the confusion in determining which early childhood programs are preschools, we recommend the Commissioner provide a definition of which early childhood programs are preschools.

To assure that the similar populations in preschool and daycare programs receive consistent care, we recommend the Commissioner of the Department of Education cooperate with the Commissioner of the Department of Health and Social Services in developing health, safety and developmental standards for preschools. We also recommend the Commissioner of the

Department of Education develop standards for the educational component of preschools.

DEPARTMENT COMMENTS

In response to our draft report, the Commissioner of the Department of Education and the Commissioner of the Department of Health and Social Services agreed with our recommendations and are taking action to improve management of early childhood programs. (See Appendices I and II)

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INTRODUCTION

There are at least 37,000 children 6 years old or younger in Alaska. Many of these children spend part of their time in organized early childhood programs, such as preschools. Research has produced abundant evidence that a good child development program has significant short and long term effects. Early childhood programs have been found to have a positive effect on a child's self respect, proficiency at learning, achievement and intelligence test scores, reduction of grade failure, and social development. According to a major economic study the benefits of a quality child development program provide a 248 percent return on the original investment.

In the State of Alaska, the Department of Education is responsible for setting preschool standards for a level of care that will insure safety, reduce predictable harm, and provide developmental opportunities. The Department of Health and Social Services is similarly responsible for daycare programs.

DEPARTMENT OF EDUCATION RESPONSIBILITIES

Alaska-Statute 14.07.020 provides that the Department of Education, in cooperation with the Department of Health and Social Services, exercise general supervision over public and private preschools and over the educational component of daycare centers, and prescribe regulations that will assure healthful and safe conditions in the schools. The Departments' responsibility is defined in Section 4 of the Alaska Administrative Code 60.010 which requires the Department issue a certificate of approval after:

- conducting an investigation of preschool applicants;
- reviewing the proposed plan of education, mode of operation and supervision of children; and
- investigating whether the programmatic objectives of the preschool are being met.

This regulation also requires that preschools have:

- a valid Department of Education certificate displayed with effective dates;
- insurance;
- a Cumulative Health Record Form and records of immunization of children;
- records of physical exam and records of immunization for staff and volunteer workers;
- a disaster plan;
- documentation, on file with the Department of Education, showing inspections for public safety were made before certification and;
- provided programmatic requirements to the Department of Education.

DEPARTMENT OF HEALTH AND SOCIAL SERVICE RESPONSIBILITIES

The role of the Department of Health and Social Services is to license, investigate and supervise daycare centers; and to issue and enforce regulations. Facilities that are primarily educational are exempt from Department of Health and Social Service regulation.

OTHER STATE INVOLVEMENT IN PRESCHOOL AND DAYCARE PROGRAMS

The Department of Community and Regional Affairs contracts with local communities to provide daycare assistance to enable parents to work or enter training. In addition, the State, through the Department, provides funds to Federal Head Start programs in Alaska.

The Department of Commerce and Economic Development provides a revolving loan fund to enable daycare facilities to obtain loans when necessary to meet licensing standards.

In addition, the Department of Environmental Conservation and the Department of Public Safety review early childhood programs for compliance with fire and sanitation standards.

SCOPE OF THE REVIEW

We performed the following steps in reviewing Department of Education's role in exercising general supervision of Alaska's preschools:

- reviewed applicable statutes and administrative procedures;
- interviewed educators, Departmental administrators, and early childhood learning center staff;
- visited preschools;
- reviewed and analyzed documents of the Department of Education and preschools; and
- gathered information by questionnaires to similar programs in other states, and to preschool and daycare centers in Alaska.

BETTER MANAGEMENT OF
PRESCHOOL PROGRAMS IS NEEDED

Historically, the Department of Education has taken little action to manage preschools and has not allocated resources for managing preschools. As a result, the Department has certified and monitored few preschools, which could expose the State to liabilities. In addition, the Department's failure to develop a definition which distinguishes between child care programs and preschools results in confusion for those attempting to manage other child care programs.

THE DEPARTMENT OF EDUCATION-MAKES
LITTLE EFFORT TO MANAGE PRESCHOOLS

Little staff time or funds are allocated to performing the Department's statutory obligation in early childhood education. The Department staff member responsible for early childhood education programs is also responsible for guidance and counseling, and private and denominational schools. Only about one eighth of her staff time is allocated to the early childhood program. In addition, the Department of Education budgets show that no funds have been allocated to early childhood programs in the last 5 years.

FEW PROGRAMS ARE CERTIFIED

The Department of Education certifies few preschool programs. Responses to questionnaires from 41 of Alaska's 52 school districts showed that there are at least 167 preschool programs in the State. Yet, during the past 5 years the Department of Education has certified only 28 programs. In addition, many of the 28 certificates were given without the necessary documentation on file in the Department. For example, of the 28 programs certified, the Department did not have a fire and sanitation inspection report on file for 12 of the programs, did not have documentation of insurance for 18 programs and did not have programmatic requirements for 18 of the programs.

In addition, many daycare centers are offering preschool programs without Department of Education supervision over the educational component. For example, of the 19 daycare programs surveyed, 18 stated they offered a preschool program but were not certified by the Department of Education.

FEW PROGRAMS ARE MONITORED

The Department is not making onsite visits to monitor the safety, medical records, insurance records or to see if the school is actually implementing a curriculum. The Department has made only about 15 onsite visits in the last 5 years. The early childhood coordinator stated that seven of the onsite visits occurred as a result of a crisis situation and the other reviews were performed on lunch hours while traveling for other reasons.

LIABILITY EXISTS FOR NONPERFORMANCE
OF STATUTORY RESPONSIBILITY

The concept of "State Certification" implies to the public that:

- the preschool is, in fact, an education institution; and
- the State, through the appropriate agency, has determined the preschool to be in compliance with appropriate laws and regulations.

In a November 1980 memo to the Department of Law, the Commissioner of Health and Social Services expressed concern about the number of unregulated preschools. The Commissioner stated in the memo that the problem of unregulated preschools causes unequal application of the law and has the following results:

1. Lowering respect for Alaska statutes in general.
2. Enforcement problems for this Department. Programs quickly call themselves pre-elementary schools when they learn that is a means of escaping regulations.
3. Risk to children in unregulated pre-elementary schools.
4. A large early childhood population subject to immunization regulations but not receiving the immunizations.

In response, the Department of Law noted that:

"This office understands that the Department of Education does not now investigate facilities applying for certification and does not supervise the physical examination of immunization requirements. Nor is the department involved in monitoring of other health and safety codes.

Even assuming that there are no certifiable pre-elementary schools in Alaska, the department's records should reflect that applications have been submitted and that investigations have taken place sufficient to determine that the Department of Education finds that no facility is a pre-elementary school or a day care facility with an education component."

The Department of Laws' advisor to the Department of Education told us that the Department of Education has been designated to perform a responsibility and currently is not performing it. Failure to perform where there is a duty to perform, can place the State in a position of exposure to liability.

PRESCHOOLS ARE NOT DEFINED

Alaska Statute 14.07.020 (8) provides that the Department of Education "...exercise general supervision over public and private pre-elementary

schools...when the school's primary function is educational." Alaska Statute 47.35.010-80 provides that the Department of Health and Social Services license..."an establishment providing care and services for any part of the 24-hour day for a child... but does not include any establishment whose primary purpose is educational." Neither of the statutes set criteria nor define what is to be considered a primarily educational facility versus a child care facility.

In 1975, the Department of Health, Education and Welfare (Federal Office of Child Development) commented in a letter to the Department of Health and Social Services that "Your statute is indeed weak, allowing for confusion and almost any interpretation..." The letter said that the most difficult job for the two Departments was the formulation of a clear and full definition of a facility whose function is "primarily educational", and the Departments should work towards better statutes and a clarification of the primarily educational function. The letter said a definition is needed so each applicant will know whether or not the law applied to their program and so each Department has a positive definition to use in deciding whether or not a facility is in their area of responsibility.

Even though the statute is weak, the Department could take action to establish standards and a definition of preschools, but they have not done so. In 1971, the Attorney General stated that a determination must be made whether a given school is actually primarily educational, and the "Department of Education...may define what type of program or programs is primarily educational."

RESPONSIBILITY FOR REGULATION IS NOT CLEAR

Because primarily educational has not been defined, neither the regulatory Departments, the facilities themselves, nor the public has a positive definition to use in deciding whether or not a program is a preschool or daycare program. As a result, any facility may choose to be classified as a preschool, and avoid the requirement to comply with daycare standards. For example, 8 of the 28 certified preschools provide daycare services but do not have to comply with daycare standards because they chose to be certified as preschools

This problem also creates confusion for regulatory agencies. At locations where both preschool and daycare services are provided, the Department of Health and Social Services has found it difficult to determine compliance because two different standards are used. For example, children in the Department of Education regulated preschool program often intermingle with children in the Department of Health and Social Services regulated daycare program, thereby changing the acceptable staff pupil ratio.

In addition, the Municipality of Anchorage also has difficulty issuing accurate, legal and meaningful permits because some child care centers are providing services regulated by their ordinance and services regulated by the Department of Education.

The Department of Health and Social Services and the Municipality of Anchorage told us that the regulatory confusion also results in some early childhood programs being unregulated. For example, we found 36 early childhood programs unregulated by either the Department of Health and Social Services or the Department of Education.

STANDARDS FOR PRESCHOOLS SHOULD BE IMPROVED

The Department of Education's preschool standards do not assure that certified preschools provide quality educational programs in a safe and healthy setting. Alaska Statutes require that the Department of Education cooperate with the Department of Health and Social Services in regulating preschools, but cooperation has not occurred. In addition, the statutes do not give the Department authority to enforce standards. Inadequate standards lead to inconsistent care for similar populations in preschools and daycare centers. Also, the value of the preschool certification process is questionable because of the inadequate standards.

PRESCHOOL STANDARDS IN ALASKA ARE INADEQUATE

Preschool standards should assure that certified preschools provide quality educational programs in a safe and healthy setting. But, the Department of Education has not established educational standards for preschools. In addition, the Departments health and safety standards for preschools are lower than the standards the Department of Health and Social Services has established for daycare centers.

Standards are Needed to Assure Quality Preschool Programs

According to Federal and national association authorities in the field of child care and development, there are two levels of standards. First, there is licensing, which is the base level and assures that a program or facility meets health, safety and child development standards.

The second level generally supplements basic licensing and is designed to assure quality where a specialized service, such as education, is being offered. Thus, a facility providing child care should be licensed, while a facility operating as a preschool should have a child care license plus be certified as a preschool.

Educational Standards Have Not Been Developed

The Department of Education has not developed specific educational standards for preschools. The Department only requires that preschools provide written information concerning the schools philosophy and goals. Examples of standards that many states have set for preschools are those relating to teacher certification and space requirements.

Teacher Certification

According to education authorities the quality of the staff determines, to a high degree, the excellence of an educational program. For example, The Teacher Education Committee of the Association for

Childhood Education International has recommended that teachers of children three through eight years of age:

- should have study in the areas of physical and biological sciences, mathematics and philosophy, language and literature, the social and behavioral sciences, and the fine arts.
- should have a minimum of twenty-four semester hours of professional preparation in the field of early childhood education,
- should have supervisory experience with young children, and
- should be required to take refresher courses and to keep active affiliation with professional organizations.

In a recent survey of 26 states, 17 said they require separate certification, four said they require a separate early childhood endorsement, and five said they currently have no requirement on early childhood teacher certification.

Alaska is one of the five states surveyed that does not require any early childhood training as a prerequisite for teaching children under age six. The Department of Education allows any person 19 years old or over, or any student who is age 16 and enrolled in a training program, to be a staff member.

Space

National experts advise that an adequate amount of space available for children's activities is absolutely necessary to ensure a quality, developmentally-orientated child care program. For example, research has shown that space effects the quality of living and learning within a center:

"the higher the quality of space in a center, the more likely were teachers to be sensitive and friendly in their manner toward children, to encourage children in their self chosen activities, and to teach consideration for the rights and feelings of self and others. Where spatial quality was low, children were less likely to be involved and interested, and teachers more likely to be neutral and insensitive in their manner, to use large amounts of guidance and restriction, and to teach arbitrary rules of social living."

In addition, tendencies towards social versus aggressive behavior has been found to be effected by space and according to a research study report:

"Several studies have found that most social involvement appears to occur at medium density (35-50 sq. ft.), while aggressiveness occurs at higher densities (below 35 sq. ft.) and random behavior occurs in large, undifferentiated settings (over 50 sq. ft. per child)."

Eight of the ten states who responded to our survey on this question required a minimum of 35 square feet per child. The Department of Education has not established space requirements for preschools in Alaska.

Preschool Standards are Lower
Than Daycare Standards

In Alaska, the Department of Education's standards for preschools are lower than the Department of Health and Social Services standards for daycare centers. For example, the only preschool standard equal to daycare standards is the immunization standard as shown in the following table.

COMPARISON OF DAYCARE AND PRESCHOOL STANDARDS

<u>STANDARD</u>	<u>DAYCARE</u>	<u>PRESCHOOLS</u>
License Renewal	Annual	5 yrs.
Agency Review	Annual	5 yrs.
Staff Pupil Ratio	1-10	no standard
Indoor Space	35 sq. ft.per child	no standard
Outdoor space	75 sq. ft.per child	no standard
Fire Inspection	Annual	5 years
Sanitation Inspection	Annual	5 years
Health Program	required	no standard
Prone Rest	required	no standard
Immunizations	required	required
Nutrition Program	required	no standard
Corporal Punishment	regulated	no standard

The Department of Health and Social Services also requires that daycare programs provide opportunities and experiences to promote the individual child's physical, emotional, social and intellectual growth, as outlined below:

- opportunities for balance of active/quiet play, group and individual, and indoor and outdoor play;
- opportunities for individual self expression in conversation, imaginative play and creative expressions;
- use of games, toys, books, sand, puzzles, for intellectual and social development;
- walking excursions/field trips; and
- equipment and furniture be of sufficient quality and quantity and appropriate to a child's use.

COOPERATION IN DEVELOPING
PRESCHOOL STANDARDS HAS NOT OCCURRED

Alaska Statutes require that the Department of Education cooperate with the Department of Health and Social Services in the general supervision

THE VALUE OF ALASKA'S PRESCHOOL
CERTIFICATION PROCESS IS QUESTIONABLE

Those who are aware of the Department of Education's standards for preschools generally consider the preschool certification process to be meaningless. For example:

- Many of the early childhood educators we interviewed said that because of the Department's inadequate standards, the preschool certificates issued by the Department do not assure a quality preschool program. Certification is, in fact, misleading to parent consumers.
- We interviewed instructors of two early childhood training programs and both teach their students that the Department's standards are not an acceptable standard to assure a quality preschool program.
- We visited one two-hour a day educationally oriented program that chose to be licensed as a day care center rather than a preschool because they thought parents would have no assurance of a quality preschool program if it only complied with the the Department's preschool standards.
- The legislature recently mandated that eligibility for a child care grant program is dependent on compliance with day care licensing standards. Those preschools certified by the Department of Education are not eligible for the grants unless they also have a daycare license.

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

The Department of Education needs to better manage preschool programs. During the past 5 years, the Department certified only 28 preschools and visited for monitoring purposes only 15 preschools. But, our analysis shows that there are at least 167 preschools. And, 18 of 19 daycare programs surveyed said they provided preschool services. In addition, because the Department of Education has not provided a definition of preschools there is confusion for those attempting to manage other early childhood programs.

The Department of Education has not cooperated with the Department of Health and Social Services in developing standards for preschool programs. Currently, there is inconsistent care for similar populations in preschools and daycare programs because preschool standards are lower than daycare standards. Preschools programs should meet daycare standards and should meet additional standards for education.

RECOMMENDATIONS

To assure that the Department of Education meets their management responsibilities for preschools, we recommend the Commissioner require that:

- preschool programs in Alaska are regulated; and
- preschool programs are monitored to assure compliance with requirements.

To help eliminate the confusion in determining which early childhood programs are preschools, we recommend the Commissioner provide a definition of which early childhood programs are preschools.

To assure that the similar populations in preschools and daycare programs receive consistent care, we recommend the Commissioner of the Department of Education cooperate with the Commissioner of the Department of Health and Social Services in developing health, safety and developmental standards for preschools. We also recommend the Commissioner of the Department of Education develop standards for the educational component of preschool.

DEPARTMENT COMMENTS

Both the Department of Education and Department of Health and Social Services responded to a draft of this report. Their comments are summarized below and are included as appendices I and II of this report.

Department of Education

The Commissioner of the Department of Education agreed with our recommendations and listed actions the Department has taken or will take to resolve the problems associated with managing preschool programs. The actions include:

- Developing a tentative agreement with the Department of Health and Social Services and the Department of Community and Regional Affairs for coordination of early childhood programs.
- Introducing a request for statutory change to require all child care programs be licensed by the Department of Health and Social Services for base level standards.
- Development of standards for a voluntary education certification process in addition to the mandatory base level licensing.
- Establishing on site reviews for evaluation of the educational component of certified preschools. (See Appendix I)

Department of Health and Social Services

The Commissioner of the Department of Health and Social Services agreed with our recommendations and is also in agreement with the plans for improvement as presented by the Department of Education. (See Appendix II)

MEMORANDUM

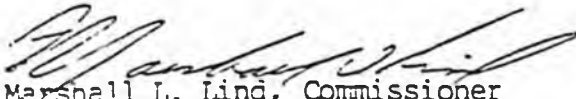
State of Alaska

TO: John O'Meara, Director
Division of Internal Audit
Office of the Governor

DATE: February 2, 1982

FILE NO:

TELEPHONE NO: 465-2800

FROM: 
Marshall L. Lind, Commissioner
Department of Education

SUBJECT: Response to Draft
Report

Attached is our response to your draft report titled "The Department of Education Needs to Improve Management of Preschool Programs". As you will note in our response, we are planning a series of actions which will address the conditions described in your report.

You and your staff are to be complimented for the professional manner in which the review was conducted and the report presented. The findings and recommendations are proving useful to us in planning how to better meet our responsibilities for preschool programs.

RECEIVED
FEB 5 1982

Office of the Governor
Division of Internal Audit

RESPONSE TO
THE DEPARTMENT OF EDUCATION NEEDS TO
IMPROVE MANAGEMENT OF PRESCHOOL PROGRAMS

FEBRUARY 1982

STATE OF ALASKA
DEPARTMENT OF EDUCATION

INTRODUCTION:

The Department of Education is in basic agreement with the findings of the report by the Division of Internal Audit titled "The Department of Education Needs to Improve Management of Preschool Programs". In responding, therefore, we will make no effort to counter any of the findings of the report. We also believe that nothing would be gained by attempting to present reasons for our past activities in the management of preschool programs. Rather, we will present those actions which have been taken and those planned to address the conditions described in the report.

ACTIONS TAKEN:

During the past two months we have met several times with a representative from Health and Social Services and once with a representative from Community and Regional Affairs. These meetings have resulted in a tentative agreement between the three departments for the coordination of early childhood programs. We have also met with representatives from the Alaskan chapters of the National Association for the Education of Young Children to discuss plans for the role these chapters might play in the management of preschool programs. A presentation has also been made before the State Board of Education. At this meeting the board voted unanimously to endorse the early childhood education career ladder certification concept. The Board was also advised of tentative plans for carrying out Department of Education responsibilities for preschools.

ACTIONS PLANNED:

The tentative plan for managing preschool programs consists of the following steps. The conditions from the report, which will be addressed by each step, are presented following the description of each step.

PROPOSED STEP I:

All day care programs, including those claiming to be preschool programs, will be licensed by the Department of Health and Social Services. This base level of licensing will be mandatory and no programs should be exempt from the licensing requirement.

CONDITIONS ADDRESSED:

Requiring that all programs which provide services for preschool age children be licensed by Health and Social Services will clear up the confusion which currently exists for regulating agencies, and for the care providers. It will not be necessary to make a predetermination of whether or not a program is "primarily education." Programs will not be able to avoid basic licensing requirements by claiming to be educational programs. The plan will insure that all programs meet basic health, safety and child development standards, and will eliminate instances of inconsistent care for similar populations of children and differential treatment of care providers.

The plan will also negate the need for the Department of Education to obtain the enforcement authority giving it the power to close schools which do not meet basic health and safety standards, since Health and Social Services already has this authority and will be responsible for base level licensing which will insure adequate health and safety standards.

Implementing Step I of the plan will necessitate a change in statute. The Departments of Health and Social Services and Education are currently working cooperatively to determine those required changes. We anticipate that we will be introducing requests for statutory changes during this legislative session.

The change in licensing requirements will also greatly increase the staff load for Department of Health and Social Services licensing personnel. This will not correspond with a decrease for Department of Education personnel, since Department of Education personnel are not currently involved in licensing. Successful implementation will, therefore, require an increase in the Department of Health and Social Services licensing budget.

PROPOSED STEP II:

Day care centers wishing to have their educational programs certified will, on a voluntary basis, notify the Department of Education. An on-site review of these facilities will be conducted using a criteria for preschool programs. Those programs successfully meeting the criteria will be certified by the Department of Education.

CONDITIONS ADDRESSED:

This step will satisfy the Department of Education's statutory responsibility for certifying preschool programs. It will also provide a definition for preschool programs without making it a condition for base level licensing.

Since the certification process is voluntary only those programs choosing to go beyond base level licensing will do so.

It is anticipated that certification will be at two levels, a basic acceptance level and an exemplary level. We plan to develop an on-site review process which will involve persons from the regional chapters of the National Association for the Education of Young Children as members of the review teams. This will result in a peer monitoring process administered by the Department of Education.

The standards for preschool programs which will be used as the criteria for certification will be developed by a Task Force during the Spring of this year. 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.

CONCLUSION:

These, then are the activities which have taken place and the plans for future activities which will enable the Department of Education to better manage preschool programs.

We feel that the plans represent a cooperative inter-departmental effort which will result in the coordination and better management of preschool programs as well as early childhood programs in general.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES
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February 8, 1982

John O'Meara, Director
Division of Internal Audit
Office of the Governor
Pouch AU
Juneau, Alaska 99811RECEIVED
FEB 8 1982

Dear Mr. O'Meara:

Office of the Governor
Division of Internal Audit

This is in response to your draft report titled "The Department of Education Needs to Improve Management of Preschool Programs." The Department of Health & Social Services is in general agreement with the findings of the audit. The document captures the essence of a serious problem and we are hopeful that the plan developed between the Departments of Education and Health & Social Services will provide corrective action. We have received the Department of Education's response to the audit which outlines that plan.

The Department of Health & Social Services is pleased to have been a participant in recent meetings between representatives of the Departments of Education, Community & Regional Affairs, and Health & Social Services. The dialogue which has begun is extremely useful and the tentative inter-departmental agreement establishes a new precedent of coordinating between three departments around concerns for young children and their families.

The Department of Health & Social Services is in full agreement with proposed Step 1 of the Department of Education's response, that all child care facilities now called Day Care Centers, Family Day Care Homes, and Preschools be licensed under one standard by the Department of Health & Social Services. A recognized principle of government is responsibility to provide equal protection and opportunity to all citizens. For young children who spend part of the day away from their families, the State fulfills this responsibility in part, through licensing to assure a basic level of care and protection, adequate program, and opportunity for development. Licensing under one standard will eliminate the disparity between the care children receive in day care facilities and preschools.

The Department of Health & Social Services is in full agreement that a change of statute is necessary to implement Step 1. In the ten years since the statutes were changed, the disparity has increased rather than decreased. A clear legislative mandate is required to correct a problem of this long standing.

The Department of Health & Social Services will require an increase in staff to perform the licensing studies. Without additional staff the Department of Health & Social Services could not accept the responsibility for an estimated 167 additional programs.

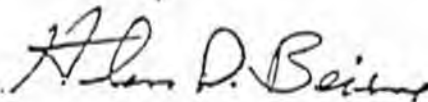
The Department is aware that some programs not now regulated may be fearful that Department of Health & Social Services regulation would result in closure of needed programs. The Department, should it receive the authority, fully intends to implement carefully and in as a supportive manner as possible. Every person or organization whose activities are regulated through licensing has the right to notice of the requirements and an opportunity to comment on them. When there are findings of non-compliance, information for correcting areas of non-compliance will be provided and reasonable time limits for meeting the new standards will be established. It is the Departments' belief that in regulating a new area, two years may be required for full implementation.

The Department of Health & Social Services believes that proposed Step 2 in the Department of Education's response, the certification of educational programs on a voluntary basis, will be well received by providers of early childhood programs. Our experience with day care centers is that directors want to have the educational component of their programs recognized. We are also in agreement that peer monitoring through regional chapters of the National Association for the Education of Young Children is an appropriate role for a professional organization to take and are therefore, in agreement with the Department of Education's plan to use this model.

It is the intent of the Department of Health & Social Services to fully cooperate with the Department of Education in implementing the proposed plan in a timely manner. It is also our intent to continue work on the inter-departmental agreement between the Departments of Education, Community & Regional Affairs, and Health and Social Services for the coordination of Early Childhood programs.

The Division of Internal Audit is to be commended for the careful study given to this important area.

Sincerely,



Helen D. Beirne
Commissioner

7-5-83

STATE OF MICHIGAN
IN THE COURT OF APPEALS

SHERIDAN ROAD BAPTIST CHURCH;
FIRST BAPTIST CHURCH BRIDGEPORT;
REVEREND GERALD SOMERO; REVEREND
RENE B. OUELLETTE; RONALD MUNSON
and JANICE MUNSON, his wife; WILLIAM
L. SWAIN and SHARON SWAIN, his wife;
and MRS. SUSANNE KWAITOWSKI,

Plaintiffs-Appellees,

versus

Court of Appeals No. 69050

Ingham County Circuit Court
No. 80-26205-AZ

STATE OF MICHIGAN, DEPARTMENT
OF EDUCATION; and PHILLIP E.
RUNKEL, SUPERINTENDENT OF
PUBLIC INSTRUCTION,

Defendants-Appellants.

AMICUS CURIAE BRIEF

OF CATHOLIC LEAGUE FOR RELIGIOUS & CIVIL RIGHTS

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<u>Lemon v. Kurtzman, 403 U.S. 602 (1971)</u>	14
<u>Meek v. Pittenger, 421 U.S. 349 (1975)</u>	14
<u>NLRB v. Catholic Bishop of Chicago, 440 U.S. 490 (1979)</u>	14
<u>Pierce v. Society of Sisters, 268 U.S. 510 (1925)</u>	2,3
<u>Sherbert v. Verner, 374 U.S. 398 (1963)</u>	6
<u>Sheridan Road Baptist Church v. State, No. 80-26205-A2,</u> <u>slip op. (Ingham Co. Cir. Ct. Dec. 29, 1982)</u>	12,13
<u>Wisconsin v. Yoder, 406 U.S. 205 (1972)</u>	3
<u>Wolman v. Walter, 433 U.S. 229 (1977)</u>	14
<u>Other Authorities</u>	
POPE JOHN PAUL II, APOSTOLIC EXHORTATION, THE ROLE OF THE CHRISTIAN FAMILY IN THE MODERN WORLD, <u>FAMILIARIS CONSORTIO</u> (1981)	2
<u>Proverbs 22:6</u>	5
SACRED CONGREGATION FOR CATHOLIC EDUCATION, THE CATHOLIC SCHOOL (1977)	4,5,7,8,11
SECOND VATICAN ECUMENICAL COUNCIL, DECLARATION ON CHRISTIAN EDUCATION, <u>GRAVISSIMUM EDUCATIONIS</u> (1965)	1

STATEMENT OF QUESTIONS INVOLVED

Catholic League for Religious and Civil Rights concurs with the Counter-Statement of Questions Involved which Appellees presented.

STATEMENT OF FACTS

Catholic League for Religious and Civil Rights concurs with the Counter-Statement of Facts Appellees presented.

ARGUMENT

I.

THE CIVIL AND RELIGIOUS RIGHTS OF PARENTS IN THE EDUCATION OF THEIR CHILDREN ARE VALUES STRONGLY RECOGNIZED BOTH IN THE PRONOUNCEMENTS OF THE CATHOLIC CHURCH AND THE UNITED STATES SUPREME COURT'S INTERPRETATION OF THE UNITED STATES CONSTITUTION.

This case requires this court to determine the extent to which a state may limit the fundamental right of parents to educate their children in accordance with their religious beliefs.

The Catholic Church recognizes a primary and most significant role which parents must play in the education of their children. For example, the Second Vatican Council stated:

【S】ince parents have conferred life on their children, they have a most solemn obligation to educate their offspring. Hence, parents must be acknowledged as the first and foremost educators of their children. Their role as educators is so decisive that scarcely anything can compensate for their failure in it. For it devolves on parents to create a family atmosphere so animated with love and reverence for God and others that a well-rounded personal and social development will be fostered among the children. Hence, the family is the first school of those social virtues which every society needs.

SECOND VATICAN ECUMENICAL COUNCIL, DECLARATION ON CHRISTIAN EDUCATION, GRAVISSIMUM EDUCATIONIS (1965), no. 3.

In a recent pronouncement Pope John Paul II elaborated on the nature of this primary parental role and explained that it could never be completely alienated to others:

The right and duty of parents to give education is essential, since it is connected with the transmission of human life; it is original and primary with regard to the educational role of others, on account of the uniqueness of the loving relationship between parents and children; and it is irreplaceable and inalienable, and therefore incapable of being entirely delegated to others or usurped by others.

POPE JOHN PAUL II, APOSTOLIC EXHORTATION, THE ROLE OF THE CHRISTIAN FAMILY IN THE MODERN WORLD, FAMILIARIS CONSORTIO (1981) (hereinafter "FAMILIARIS CONSORTIO"), at no. 36 (emphasis in original).

The significance of the right and duty of Christian parents to educate their children in a manner comporting with their faith led the Pope to state that the "rights of parents to choose an education in conformity with their religious faith must be absolutely guaranteed." FAMILIARIS CONSORTIO at no. 40.

Interestingly the concerns the Catholic church has expressed have been mirrored to a large extent by the pronouncements of the United States Supreme Court in cases involving constitutional challenges to state statutes impinging upon parents' religiously motivated choices in the education of their children. The first case lending support to this conclusion is Pierce v. Society of Sisters, 268 U.S. 510 (1925). There the Supreme Court upheld a challenge to a law forbidding attendance at private schools on the basis of a "liberty" interest which the Court felt inhered in the Due Process Clause, U.S. CONST., amend. XIV. The Court noted that there was a "liberty of parents and guardians to direct the upbringing and education of children under their control." 268 U.S. at 534-535. The Court further observed, "The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." 268 U.S. at 535.

Although Pierce was decided under a "substantive due process" rationale, which fell out of favor for a time before making a powerful return in the "personal privacy" cases of the last two decades, the same basic right of parental educational direction was reaffirmed, primarily on the basis of the Free Exercise Clause, U.S. CONST., amend. 1, in Wisconsin v. Yoder, 406 U.S. 205 (1972). There the Court concluded that enforcement of Wisconsin's compulsory education statute would impinge upon Amish parents' rights to direct their children's religious upbringing. See Id. at 215-219. The Court's holding further determined that the involved State interests in compulsory education could not, override the parents' legitimate claims under the Free Exercise Clause. See Id. at 219-236.

The above discussion demonstrates most clearly that Catholic parents place a great value on their right and responsibility to educate their children in a manner comporting with their religious faith. They recognize that this right and responsibility is primarily theirs, cannot be completely alienated to another entity, requires careful and deliberate exercise and should be protected against any deleterious state action. They further recognize that this right and responsibility is not a creation of a Church, but a basic trait of parenthood. Accordingly, Baptist parents enjoy the same basic right and responsibility in the education of their children and this right and responsibility must be protected from adverse state interference. The above discussion further demonstrates that the United States Supreme Court has recognized the basic right and responsibility parents have for the education of their children in accordance with their religious beliefs as inhering in the Constitution and subject to State interference only when necessary to protect a compelling state interest. With this background we now consider the sectarian school systems which have arisen from the exercise of constitutionally protected parental educational

choice and the particular examples of State interference with these sectarian schools which are alleged to infringe upon this parental choice.

II.

CONSTITUTIONALLY PROTECTED CATHOLIC PARENTAL EDUCATIONAL CHOICES, LIKE CONSTITUTIONALLY PROTECTED PROTESTANT EDUCATIONAL CHOICES, HAVE RESULTED IN SECTARIAN SCHOOLS WITH DIFFERENT EDUCATIONAL PURPOSES AND REGIMENS THAN PUBLIC SCHOOLS. THUS, TEACHER OR CURRICULUM REQUIREMENTS TAILORED FOR PUBLIC SCHOOLS ARE UNSUITABLE FOR SECTARIAN SCHOOLS AND CAN IMPAIR CONSTITUTIONALLY PROTECTED PARENTAL EDUCATIONAL CHOICES.

In efforts to exercise their constitutional rights to educate their children in accordance with their religious beliefs, Catholic and Protestant parents have each formed school systems which serve as alternatives to the public school system. In their brief and the trial record, the Plaintiff-Appellees have made this court aware of the pervasively Christian character of the Fundamentalist Protestant school. It is interesting to note that the Catholic school, like the Fundamentalist Protestant school, is founded upon a distinctly Christian approach to education.

A description of the distinctly Christian approach of the Catholic school may be found in The Sacred Congregation for Catholic Education's document, THE CATHOLIC SCHOOL, issued March 19, 1977. The Sacred Congregation makes clear that the distinctive feature of a Catholic school is "its reference to a Christian concept of life centered on Jesus Christ." SACRED CONGREGATION FOR CATHOLIC EDUCATION, THE CATHOLIC SCHOOL (1977), at no. 33. "Christ is the foundation of the whole educational enterprise in a Catholic school," *Id.* at no. 34, and "The Catholic School is committed . . . to the development of the whole man, since in Christ, the Perfect Man, all human values find their fulfillment and unity." *Id.* at no. 35. The goal at which the Catholic school aims is "forming in the Christian those particular virtues which will enable him to live

a new life in Christ and help him to play faithfully his part in building up the Kingdom of God." Id. at no. 36. Based on these premises the Catholic school has the tasks of synthesizing culture and faith and faith and life. Id. at no. 37. "The first [of these two tasks] is reached by integrating all the different aspects of human knowledge through the subjects taught, in the light of the Gospel; the second in the growth of the virtues characteristic of a Christian." Id.

This description of the Catholic school, like the descriptions of the Baptist schools this Court has been provided with in Plaintiffs' briefs and the trial record, requires one clear conclusion. That is that private sectarian schools, including Catholic schools, have as their central purpose to "instruct a child in the way he should go"¹ through bringing a child to a point of informed adherence to and practice of basic Christian values. Accordingly, a private sectarian school, like a Catholic school, will fundamentally differ from a public school by including the instruction of Christian values as they relate to every phase of the curriculum. The important presence of Christian values in sectarian school courses means that these courses may often not clearly resemble courses taught in a public school. Further, the qualifications necessary to teach these value laden subjects in a sectarian school will differ from those needed to teach the same type of courses in a public school in which transmission of religious values is forbidden. This means that the constitutional guarantee of parental educational choice can only be preserved if parents opting for sectarian education are permitted to choose sectarian schools which have teachers and curricula which may substantially differ from those found in public schools. State regulations which attempt to require private schools to

¹ Proverbs 22:6.

conform to requirements which may be appropriate for public schools, thus, can significantly impair the constitutionally protected parental choice of sectarian education. As will be seen more fully in succeeding pages, the state requirements at issue in this case have this unconstitutional effect.

III.

THE REQUIREMENT OF 1921 MICH. PUB. ACTS 302, SECTION 3, MICH. COMP. LAWS ANN. § 388.553 (1976), THAT TEACHERS IN PRIVATE SCHOOLS HOLD A TEACHING CERTIFICATE EQUIVALENT TO THAT REQUIRED OF PUBLIC SCHOOL TEACHERS IS AN IMPINGEMENT UPON PARENTS' CONSTITUTIONALLY PROTECTED RIGHTS TO EDUCATE THEIR CHILDREN IN ACCORDANCE WITH THEIR RELIGIOUS BELIEFS WHICH DOES NOT ADVANCE A COMPELLING STATE INTEREST NOR CONSTITUTE THE LEAST RESTRICTIVE MEANS TO ACHIEVE ANY ARGUABLY PRESENT STATE INTEREST.

In 1921 P.A. 302, Section 3, MICH. COMP. LAWS ANN. § 388.553 (1976), the State has enacted a "certification" requirement for private school teachers, which reads in relevant part:

No person shall teach or give instruction in any private, denominational or parochial school within this state who does not hold a certificate such as would qualify him or her to teach in like grades of the public schools of the state

In approaching the issue of whether this proposal unconstitutionally interferes with rights guaranteed by the Free Exercise Clause of the U.S. CONST., amend. I, it is first necessary to examine whether there exists any burden on the free exercise of religion. See Sherbert v. Verner, 374 U.S. 398, 403 (1963). The free exercise right involved is that of parents of private school children to effectively exercise their constitutionally protected right to choose a sectarian education for their children. If this right is burdened by the state regulation, the State will be required to prove that this regulation implements a compelling state interest, and that the regulation is the means placing the least restriction on parents' free exercise rights which can implement this interest. See Sherbert, 374 U.S. at 406-408.

Addressing the question of whether the proposal burdens free exercise requires a further examination of the role of the teacher in the sectarian school context. As Plaintiffs' brief and trial testimony makes clear, a teacher in the Baptist schools is involved in a ministry in which he or she is shaping young people in accordance with Christian values. The teacher in the Catholic school has this same responsibility. In the first of the two tasks of the Catholic school explained supra, the integration of faith and culture, the teacher plays a critical role. The Sacred Congregation for Catholic Education noted in this respect:

Since the educative mission of the Catholic school is so wide, the teacher is in an excellent position to guide the pupil to a deepening of his faith and to enrich and enlighten his human knowledge with the data of the faith. While there are many occasions in teaching when pupils can be stimulated by insights of faith, a Christian education acknowledges the valid contribution which can be made by academic subjects towards the development of a mature Christian. The teacher can form the mind and heart of his pupils and guide them to develop a total commitment to Christ, with their whole personality enriched by human culture.

SACRED CONGREGATION FOR CATHOLIC EDUCATION, THE CATHOLIC SCHOOL (1977), at no. 40.

The specific qualifications and duties of the teacher in the sectarian Christian school have been further explained by the Sacred Congregation in these manners:

The school considers human knowledge as a truth to be discovered. In the measure in which subjects are taught by someone who knowingly and without restraint seeks the truth, they are to that extent Christian. Discovery and awareness of truth leads man to the discovery of Truth itself. A teacher who is full of Christian wisdom, well prepared in his own subject, does more than convey the sense of what he is teaching to his pupils. Over and above what he says, he guides his pupils beyond his mere words to the heart of total Truth.

The cultural heritage of mankind includes other values apart from the specific ambient of truth. When the Christian teacher helps a pupil to grasp, appreciate and assimilate these values, he is guiding him towards eternal realities. This movement towards the Uncreated Source of all knowledge highlights the importance of teaching for the growth of faith.

Id. at nos. 41,

Finally, the Sacred Congregation emphasized the crucial role of the teacher in the process of integrating faith and culture:

The achievement of this specific aim of the Catholic school depends not so much on the subject matter or methodology as on the people who work there. The extent to which the Christian message is transmitted through education depends to a very great extent on the teachers. The integration of culture and faith is mediated by the other integration of faith and life in the person of the teacher. The nobility of the task to which teachers are called demands that, in imitation of Christ, the only Teacher, they reveal the Christian message not only by word but also by every gesture of their behaviour. That is what makes the difference between a school whose education is permeated by the Christian spirit and one in which religion is only regarded as an academic subject like any other.

Id. at no. 43.

Although the Sacred Congregation places special emphasis on the Catholic school teacher's critical role in the pupils' integration of faith and culture, it emphasizes that the teacher's role also extends into the very central matter of the pupils' integration of faith and life: "The fundamental aim of teaching is the assimilation of objective values, and, when this is undertaken for an apostolic purpose, it does not stop at an integration of faith and culture but leads the pupil on to a personal integration of faith and life." Id. at no. 44.

More specifically, the Sacred Congregation directs:

The Catholic school should teach its pupils to discern in the voice of the universe the Creator Whom it reveals and, in the conquests of science, to know God and man better. In the daily life of the school, the pupil should learn that he is called to be a living witness to God's love for men by the way he acts, and that he is part of that salvation history which has Christ, the Saviour of the world, as its goal.

Id. at no. 45.

This background of the Catholic school, as part of the species of sectarian schools this proposal attempts to regulate, illustrates the absolutely crucial role of the unabashedly Christian teacher to the successful working of the school. Thus, any state regulation which would restrict this pool of Christian

teachers will burden religious protections guaranteed by the Free Exercise Clause, U.S. CONST., amend. I. By substantially diminishing the pool of available teachers with the requisite Christian qualifications, the State's certification requirement impedes the carrying out of sectarian school parents' Free Exercise right to select the teachers who would most effectively fulfill the crucial role of a sectarian school teacher. More specifically, the sectarian school is required to forego the services of many teachers who would superiorly transmit to students the authentic Christian approach to both religious and secular subjects. Instead, the school is required to select teachers who are less capable, and perhaps almost unqualified, on the important basis of their religious convictions, but who possess valid teaching certificates which, even in secular subjects, bear little relationship to their ability to effectively teach. Thus, when sectarian schools choose to comply with the type of certification requirements found in this case, the result can be a lessening of the schools' ability to effectively transmit Christian values to students. Because transmission of these values constitutes the central and unique mission of the sectarian school, and the purpose for which parents would choose a sectarian school to effectuate their Free Exercise rights to educate their children in accordance with their religious beliefs, the statute's impairment of the sectarian school's ability to effectively transmit Christian values is an unconstitutional interference with these parents' rights, under the Free Exercise Clause, U.S. CONST., amend. I.

While the teacher certification requirement wreaks havoc with parents' rights to effectively choose a sectarian school for their children, it is not an appropriate means to accomplish any interests the State may have in insuring that sectarian school children receive a proper education. Although the State may have a compelling interest in compulsory school attendance generally, it

does not follow that the state has carried its burden of proving that its certification requirements achieve this interest in the manner least restrictive to parental rights to educate their children in accordance with their religious beliefs. Initially, the fact that only a handful of the states have been shown to require certification for private school teachers is strong evidence that a certification requirement is unnecessary to satisfy the educational interests all states share. Further, the State has offered little clear empirical evidence to demonstrate that a certification requirement is necessary to guarantee high quality education. Finally, there are undoubtedly means which place fewer restrictions on free exercise rights, such as requiring parents to educate their children, requiring schools to provide the acknowledged universal "basics" of education and limiting any gross parental abuse of their educational duty through child abuse statutes, which could effectively monitor and guarantee the reception of quality education. Accordingly, the requirement for certification of private school teachers is an unconstitutional infringement upon sectarian school parents' rights to educate their children in accordance with their religious beliefs.

IV.

THE REQUIREMENT OF 1921 MICH. PUB. ACTS 302, SECTION 1, MICH. COMP. LAWS ANN. § 388.551 (1976), THAT COURSES OF STUDY IN PRIVATE SCHOOLS BE OF THE SAME STANDARD AS THOSE PROVIDED BY THE GENERAL SCHOOL LAWS OF THE STATE IMPERMISSIBLY IMPINGES UPON PARENTS' FREE EXERCISE RIGHTS UNDER THE U.S. CONST., AMEND. I, TO EDUCATE THEIR CHILDREN IN ACCORDANCE WITH THEIR RELIGIOUS BELIEFS, IS NOT NECESSITATED BY A COMPELLING STATE INTEREST AND IS NOT THE METHOD TO ACHIEVE ANY PURPORTED GOVERNMENTAL INTEREST WHICH HAS THE LEAST EFFECT UPON THE PROTECTED RIGHTS.

The curriculum regulations present much the same problems as the teacher certification requirements, and are unconstitutional for very similar reasons.

Curriculum, like teacher qualities, is a central feature distinguishing sectarian private schools from public schools and parental preferences for a private school are often based upon this distinction. It is well known that public schools are generally restricted in their ability to transmit Christian values. See Abington Township School District v. Schempp, Murray v. Curlett, 374 U.S. 203 (1963) (Prohibiting Bible reading in public schools except when studied as literature); Engel v. Vitale, 370 U.S. 421 (1962) (Prohibiting recitation of government composed prayer in public schools). In sharp contrast, sectarian schools are very concerned with the transmission of these values. In the case of Catholic schools it has been noted:

The specific mission of the school, then, is a critical, systematic transmission of culture in the light of faith and the bringing forth of the power of Christian virtue by the integration of culture with faith and of faith with living. Consequently, the Catholic school is aware of the importance of the Gospel-teaching as transmitted through the Catholic Church. It is, indeed, the fundamental element in the educative process as it helps the pupil towards his conscious choice of living a responsible and coherent way of life.

SACRED CONGREGATION FOR CATHOLIC EDUCATION. THE CATHOLIC SCHOOL (1977), at no. 49.

The pervasive importance of gospel teaching is further emphasized in its lack of confinement to specific religion courses in a sectarian school and its role in insuring that students obtain more than a mere intellectual appreciation of the truths of Christ:

Without entering into the whole problem of teaching religion in schools, it must be emphasized that, while such teaching is not merely confined to "religious classes" within the school curriculum, it must, nevertheless, also be imparted explicitly and in a systematic manner to prevent a distortion in the child's mind between general and religious culture. The fundamental difference between religious and other forms of education is that its aim is not simply intellectual assent to religious truths but also a total commitment of one's whole being to the Person of Christ.

Id. at no. 50.

Obviously, sectarian schools, including Catholic schools, must have significant latitude in the development of their curricula if they are to serve as effective objects of parents' constitutionally protected rights to educate their children in accordance with their religious beliefs. However, the framework of state regulation of private school curricula in this case has great potential to impair this required freedom. The "same standard" language of the involved statute is construed to require comparison to the local public school curriculum,² but is sufficiently vague to permit a number of different modes of enforcement. If the enforcing entity were to interpret this language only to require a review of course titles to see that the sectarian school curriculum included instruction in the acknowledged universal "basics" of education, there would normally not be significant impairment of religious freedom. But, even under this minimal review there would be a potential for significant potentially objectionable courses in areas such as sex education or "values clarification" which can be found in many public school curricula.

Further, the language of the involved statute does not require the enforcing entity to limit its inquiry into whether private schools are of the "same standard" as public schools to an examination of course titles. If an enforcing entity were to determine that the "same standard" requirement extended to the content of courses in each school, significant infringement of parental rights would result. This would occur because the content of a sectarian school course, in which the Gospel should be emphasized, could differ in major respects from similar courses in public schools in which the Gospel is not emphasized.

² See Sheridan Road Baptist Church v. State, No. 80-26205-A2, slip op. at 7 (Ingham Co. Cir. Ct. Dec. 29, 1982).

Thus, the ambiguous language of the statute, standing alone, results in great potential for infringement of parental rights under the Free Exercise Clause to educate their children in accordance with their religious beliefs. However, the significant difficulties inherent in this ambiguous statute are aggravated by the fact that the body enforcing the statute is not an "impartial" governmental body. Instead, the superintendent of the school district in which the sectarian school is located has enforcement responsibilities. See Sheridan Road Baptist Church v. State, No. 80-26205-A2, slip op. at 7 (Ingham Co. Cir. Ct. Dec. 29, 1982). It is not difficult to imagine the potential for abuse which may exist when a public school superintendent, whose system is losing students and state aid by the presence of vibrant sectarian schools, is given the responsibility to enforce the standards these sectarian schools must meet. Accordingly, the statute in this case represents a significant infringement of parents' constitutional rights to educate their children in accordance with their religious beliefs.

Although the statute significantly infringes upon parents' constitutional rights, there exists little relationship between the statute and the state's expressed purpose of "quality education." Initially, the trial judge correctly noted that the statute does not guarantee quality education on a state-wide basis, but instead merely insures that the private school will match the quality of the local public school. Further, if the statute only requires an inspection of course titles, it is difficult to see what major positive or negative impact it would have on the quality of education. Finally, if the statute requires a significant conformity between the content of private and public school courses, it could actually have the effect of reducing educational quality by forcing superior sectarian school courses to resemble inferior public school courses. In any event it is clear that the statute is neither an appropriate means to

achieve the stated purpose of quality education nor the "least restrictive means" to achieve this end. Accordingly, the statute is an unconstitutional infringement of sectarian school parents' Free Exercise rights to educate their children in accordance with their religious beliefs.³

³ Although this brief's focus has been on parental Free Exercise rights to educate their children in accordance with their religious beliefs, it appears that both the teacher certification and curriculum requirements create an unconstitutional excessive entanglement between government and sectarian schools. In noting that a more indirect regulation, involving sectarian school teachers' collective bargaining rights, could pose "entanglement" problems, the United States Supreme Court noted:

"Whether the subject is 'remedial reading,' 'advanced reading,' or simply 'reading,' a teacher remains a teacher, and the danger that religious doctrine will become intertwined with secular instruction persists." Meek v. Pittenger, 421 U.S. 349, 370 (1975). Cf. Wolman v. Walter, 433 U.S. 229, 244 (1977). Good intentions by government --or third parties--can surely no more avoid entanglement with the religious mission of the school in the setting of mandatory collective bargaining than in the well-motivated legislative efforts consented to by the church-operated schools which we found unacceptable in Lemon, Meek, and Wolman.

NLRB v. Catholic Bishop of Chicago, 440 U.S. 490, 501-502 (1979).

The thrust of the Catholic Bishop language would appear to be that, even if government regulation of sectarian school teacher qualifications and curricula did not impinge upon parental Free Exercise rights, pervasive regulation of these matters, which appears to be actually or potentially present in this case, could present an unconstitutional "excessive entanglement" between the state and sectarian schools. It would further appear that this rationale formed much of the basis of the ruling under review in this matter.

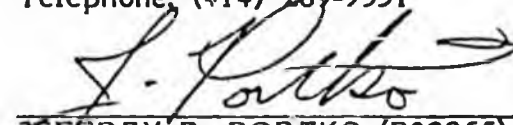
RELIEF

Based upon the foregoing discussion, the Catholic League for Religious and Civil Rights requests that this Court rule that 1921 Mich. Pub. Acts 302, Sections 1 and 3, MICH. COMP. LAWS. ANN. §§ 388.551 and 388.553 (1976), violate the Free Exercise Clause of the U.S. CONST., amend. 1, and award the Plaintiff-Appellees any relief to which they are entitled in this action.

Respectfully submitted, this 5TH day of July, 1983.



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ATTORNEYS FOR CATHOLIC LEAGUE
FOR RELIGIOUS AND CIVIL RIGHTS

Alaska State Legislature

REP. MAE TISCHER
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House of Representatives
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

MEMORANDUM

TO: Representative Mae Tischer
FROM: Bill Lovell, Staff *Bill*
DATE: January 21, 1984
RE: Comparison of proposed CSHB 514 (HESS) and HB 514

For your information, I have compared the proposed HESS Committee Substitute for House Bill 514 to the original version of the bill.

Section 1 of the proposed CS has three changes from the original bill:

Page 1, lines 11 - 12, Adds "and in recognition of the right of parents to choose to have their children educated in private schools". The effects of the amendment are to balance the draft formation and to add additional emphasis to the independence and security of religious and other private schools.

Page 1, line 19, Adds a new subsection (3), to read, "to minimize regulation of private education." The effect of the new language is to further clarify and emphasize the intent of the bill.

Section 2 of the proposed CS contains no changes from the original bill.

Section 3 of the proposed CS has one change from the original bill:

Page 3, line 27, Substitutes "AS 14.45.100 - 14.45.140" for the original citation, "AS 14.45". This change is made upon recommendation of Legislative Counsel in order to correctly identify the accurate legal reference.

Section 4 of the proposed CS contains no changes from the original bill.

Section 5 of the proposed CS has one change from the original bill:

Page 6, line 13, Substitutes "grades four, six, and eight" for the original language, "grades one, three, six, and nine". The effect is to make testing requirements for private schools more in line with the testing requirements for public schools. At this time, the state requires a random sampling of school districts to administer a "student assessment" at least once a year to students in grades four and eight; this amendment adopts that requirement for all private schools and adds one additional required test in the sixth grade to further ensure adequate core education.

/wtl

STATE OF ALASKA
THE LEGISLATURE

FOUCHY STATE CAPITOL
JUNEAU ALASKA 99801
907 455 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 24, 1984

SUBJECT: Health and safety regulation
of private pre-elementary
schools (CSHB 514(HESS))

TO: Representative Mae Tischer
Chairman, House HESS Committee

FROM: Keith B. Levy *KB*
Legislative Counsel

You have requested an opinion on the implication of CSHB 514(HESS) with respect to health and safety regulation of private pre-elementary schools. The bill, while removing the supervision of private pre-elementary schools from the Department of Education, in no way removes the power of the Department of Public Safety to regulate these schools with respect to fire safety or the Department of Health and Social Services to regulate with respect to health standards. In fact, several sections in the bill as well as other provisions of law make it clear that private pre-elementary schools may be regulated with respect to health and safety.

To begin with, AS 14.07.020(7), as amended by section 2 of the bill, provides that the Department of Education shall:

prescribe by regulation, after consultation with the state fire marshal and the state sanitarian, standards that will assure healthful and safe conditions in the public and private schools of the state including a requirement of physical examinations and immunizations in private pre-elementary schools.

That section applies general health and safety standards to all the public and private schools in the state, including the private pre-elementary schools. It also imposes a specific requirement of physical examinations and immunizations on private pre-elementary schools. In other

Representative Mae Tischer
Page 2
January 24, 1984

words, private pre-elementary schools are subject to health and safety regulations generally under the bill.

Moreover, Title 18 of the Alaska Statutes sets out provisions for health and safety, all of which, if appropriate, apply to private pre-elementary schools unless some specific exemption exists. There is no such exemption in CSHB 514 (HESS).

Specifically, AS 18.70.080 provides for the Department of Public Safety to adopt regulations for fire safety applicable to all public buildings. "Buildings" is defined very broadly in AS 18.70.300 and would clearly apply to private pre-elementary schools.

In conclusion, CSHB 514 (HESS), while providing that private pre-elementary schools are no longer subject to regulation by the Department of Education, has no effect on the ability of other departments to regulate these schools with respect to health and safety.

KBL:ojb
J2/070

January 18, 1984

I want to thank the sponsors of HB 514 and Senate Bill 354 for their attitude, concern, and intentions. The purpose of this legislation as expressed is excellent. The assurance of religious liberty and a child's education without conflict is supported by most of us. However, there is an incongruence in the bill as written. Section I subsection (1) states that "the state shall not control or interfere with the rights of conscience and religious liberty;". Yet, in this bill churches seeking exemptions have to meet conditions and file reports to the state.

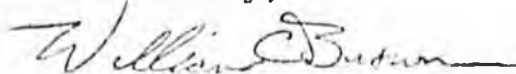
I am the Minister of Education for Glacier Valley Baptist Church, in Juneau. As a church we can not request or accept an exemption from the Department of Education. Exemptions can only be granted to a lesser by a greater power. We can not take an easy way out from possible confrontations if that way involves denial of the Sovereignty of our Lord.

The state can still meet its obligations of ensuring that a child receives an education that prepares him as a viable member of society, by placing the primary responsibility of education where it belongs, on the parent. The parent should be responsible for the reports to the state if he elects to educate his child in a program other than the public schools, or state controlled alternatives.

In view of the purpose of this legislation, please see my enclosure for the suggested changes.

Thank you.

Sincerely,



William E. Brown

Minister of Education

Page 1 line 16 DELETE "all" from all education. In line 19 one example is given that voids the "all" aspect.

Section 14.45.030. page 5 lines 3-9 DELETE If you don't meet the requirements of the exemption (voluntary or otherwise) you are under Department of Education's control.

Section 14.45.100. page 5 lines 11-16 DELETE Asking for an exemption implies recognition of control or higher authority. This is incongruent to the stated purpose of the legislation in Section I subparagraph (1) and (2)

Page 5 lines 25, 26, 27 recognizes the local public school superintendent as in authority over the church school.

Page 5 lines 28, 29 Page 6 lines 1-5 Entangles the church school unnecessarily and once again places the school as answerable to the state.

Page 6 lines 6-11 Testing requirements DELETE (a) A religious or other private school" Excessive entanglement.

Page 6 lines 14-19 Subsection (c) DELETE

CHANGES

Article 2 Section 14.45.100. Children Enrolled In Private and Religious Schools.

Parents choosing to enroll their children in schools where the laws and regulations relating to education except law and regulations relating to physical health, fire safety, sanitation, immunization, and physical examinations are not applicable must file notice of enrollment with their local public school district.

Section 14.45.110 Parental Responsibilities concerning non licensed education.

Page 5 lines 18-24 Remain

line 25 DELETE school shall notify, add "the parent shall notify."

Page 6 lines 6-11 change "a religious or other private school" to "a parent"

Page 6 line 8 change "shall administer" to "shall submit the results"

Page 6 line 14-19 Subsection (C) change line 19 from "the composite test results" to "the student test results from a non licensed school utilized by parents in compliance with AS 14.45.100-AS 14.45.140"

Page 6 lines 28-29

A parent or guardian that elects to comply with AS 14.45.100-14.45.140 shall file an annual report reflecting standardized test scores, past year's grades, and approaching year's course of study, no later than October 1. Students enrolled for the first time in a non licensed church or private school will not be required to report previous year's performance.

Page 7 lines 1-3 DELETE. Insert A student that transfers from an alternative education covered by AS 14.45.100-14.45.140 to a public school shall have records that reflect immunizations, physical examinations, standardized testing, academic achievement, and courses attended.

Page 7 lines 4-7 DELETE - excessive entanglement

NOTICE OF ENROLLMENT IN A NON-LICENSED SCHOOL
198__ SCHOOL YEAR

STUDENT'S NAME _____ AGE _____ GRADE _____

SCHOOL PROVIDING SERVICES _____ CITY _____

COURSE OF STUDY FOR THIS ACADEMIC YEAR

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

REST OF FORM IS TO BE COMPLETED FOR STUDENTS CONTINUING IN A NON-LICENSED SCHOOL.

COURSES TAKEN PRIOR ACADEMIC YEAR. LIST GRADES EARNED.

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

IF A CHILD WAS IN GRADES ONE, THREE, SIX, OR NINE, COMPLETE THE FOLLOWING STANDARDIZED TEST INFORMATION.

NAME OF TEST	DATE	PCTL SCORES			
	ADMINISTERED	ENGLISH GRAMMAR	READING	SPELLING	MATHEMATICS

PARENTS OR GUARDIAN'S SIGNATURE _____

ADMINISTRATOR'S SIGNATURE OF
SERVICING SCHOOL _____

level of safety for 3-5 year olds. Most parents assume that teachers and staff have received a Tine test, since that is required so uniformly of people dealing with children. Most parents are unaware that in spaces smaller than that which allows 35 sq. ft. per child (the minimum for day care licensing), crowded conditions increase the incidence of sickness and disease.¹ In addition in those same conditions children are more likely to be less involved and interested and more aggressive while teachers tend to be more restrictive and arbitrary.² Parents assume that a program caring for their children has insurance coverage. Most parents assume that at least some of the staff has first aid training and that planned and practiced emergency procedures are in place. None of these are assured when a program is exempt from minimum state regulation, although nowhere does this bill require exempt programs to inform its parents that it has chosen to remove itself from state regulation.

Both the League and AAUW believe that "regulations and standards appropriate to the locale and involving health, nutrition, safety, space per child, and staff training should be adopted by state...governments"; that regulatory licensing by the state for care of children during the day is necessary; and that "essential in a full day care situation are a tight child-staff ratio and the provision of nutritional meals and snacks." Because of these positions we feel that permitting all private pre-schools, including those who care for children up to 10 hours/day, is an unwise move. Since the legislature is determined to do this, however, we support the Senate amendment that would exempt only those pre-elementary schools which have connections with an established elementary program. We feel that greater internal control may result in such situations, and the public is protected from unscrupulous programs providing all day care of children, but simply using the "pre-elementary" term as a convenient way to escape licenture.

In addition we support the Senate amendment that specifically spells out that programs serving pre-kindergarten kids may not be exempt from regulation if it receives state payments or subsidies. We feel it is important to make that clear since private pre-schools may be eligible for state monies through the Child Care Revolving Loan Program, the Child Care Food Program, Chapter I monies, and the Rural Development Assistance Program (according to the Senate Advisory Day Care Status Report). The state should not help to finance those programs which may be physically or mentally unhealthy for young children. Thank you.

1. Senate Advisory Council. "Day Care in Alaska: A Status Report."
2. Division of Internal Audit. Office of the Governor. "The Department of Education Needs to Improve Management of Preschool Programs."

PROPOSED AMENDMENT TO
CS FOR SENATE BILL 354 (Judiciary)

*Section 1. PURPOSE. In conformity with the fundamental right to freedom of religion guaranteed by the constitutions of the United States and the State of Alaska; and in recognition of the right of parents to choose to have their children educated in private schools; it is the purpose of this Act

(1) to ensure that in matters of education by religious organizations, the state shall not control or interfere with the rights of conscience and religious liberty; and

(2) to further the state's legitimate interest in ensuring the quality of all education, and

(3) to allow diversity in education by encouraging private education.

*Bill,
Mac wants to
add this to the
CS you're working
on.*

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: H.B. 514
 Title: An Act relating to the regu-
 lation of private schools
 Sponsor: Tischer, et al
 Requestor: _____
 Date of Request: 1/23/84

FISCAL DETAIL

Agency Affected: Environmental Conservation
 Program Category Affected: NRMEC
 BRU, Program or Subprogram(s) Affected: _____
Environmental Quality Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		0	0	0		
200 TRAVEL		0	0	0		
300 CONTRACTUAL		0	0	0		
400 SUPPLIES		0	0	0		
500 EQUIPMENT		0	0	0		
600 LAND & STRUCTURES		0	0	0		
700 GRANTS, CLAIMS		0	0	0		
800 MISCELLANEOUS		0	0	0		
TOTAL OPERATING		0	0	0		
CAPITAL		0	0	0		
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0		
FEDERAL FUNDS		0	0	0		
OTHER		0	0	0		
TOTAL		0	0	0		

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Joe Cladouhos, Director Phone: 465-2640
 Division: Environmental Quality Management Date: 1/23/84

Approved by Commissioner: Richard Neve Date: 1/23/84
 Agency: Environmental Conservation

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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100 CUSHMAN ST.
SUITE 400
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PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

465-3603

January 23, 1984

The Honorable Mae Tischer
Alaska State House
Pouch V
Juneau, AK 99811

Re: CSHB 514 (HESS)

Dear Representative Tischer:

You have asked that we indicate whether CSHB 514 (HESS) remedies the equal protection problems which we identified last year during consideration of HB 357. We believe that it does. For additional detail, please refer to our review of SCS CS HB No. 357 (Rls) am S, a copy of which is enclosed.

If you have other questions, do not hesitate to contact this office.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: *Linda Stovica for*
Thomas H. Robertson
Assistant Attorney General

THR:jal

Enclosure

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
 Bill/Resolution No.: HB No. 514
 Title: An Act relating to the regulation of private schools.
 Sponsor: Tischer, Furnace, et al
 Requestor: HESS
 Date of Request: 1/15/84

FISCAL DETAIL
 Agency Affected: Health and Social Services
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: Direct Delivery Service

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOT. OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Michael A. Price Phone: 465-3170
 Division: Family and Youth Services Date: _____

Approved by Commissioner: Robert London Smith Date: 2/9/84
 Agency: Dept. of Health & Social Services

- Distribution (by Agency preparing fiscal note):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

12/1/83