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COMMITTEE REPORT

(7)

HOUSE

FURTHER:

Date: 2 - 15 - 1984

Mr. Speaker:

The Committee on Rules has had CSSB 354(Jud)am

"An Act relating to the regulation of private schools"

under consideration and reports it back as follows:

do pass  do not pass

do pass with attached amendments(s)

replace with <sup>HCS</sup> ~~XCS~~ for CSSB 354(Rules)  same title  new title

and recommends \_\_\_\_\_

AND attaches a "Letter of Intent"  New Fiscal Note

reports it back without recommendation

referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

*Baroness Palmer*  
*John J. DiStasio*  
*John J. DiStasio*  
*John J. DiStasio*  
*John J. DiStasio*  
*John J. DiStasio*  
*John J. DiStasio*  
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*John J. DiStasio*

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*John J. DiStasio*  
CHAIRMAN



RULES COMMITTEE MEETING - WED. FEB. 15, 1984

RE: HCS CSSB 354(Rules)

The purpose of this Committee meeting is to consider a Rules Committee substitute for HCS CSSB 354(Hess). The differences between the proposed Rules CS and the House HESS Version are primarily technical, and include:

(1) on page 2, line 19, the word "private" before "pre-elementary" has been deleted to make clear that the subject regulations apply to both public and private pre-schools.

(2) on page 2, lines 23 &24, DOE's general authority over pre-elementary schools has been broadened to include any pre-school that receives direct State or federal funding, conforming to the general intent of the bill to only eliminate regulation of totally privately funded schools. The House HESS version limited DOE's supervisory authority to only public pre-schools.

(3)line 21, page 3. The definition of "Pre-elementary schools" included in the body of the House HESS version has been moved here to a separate definition section.

(4) line 18, page 7. The definition of "Private schools" for the purpose of exemption of schools from State regulation is moved to the definitions section and reworded slightly to clarify that any school receiving direct state or federal funding is not exempt from regulation. The HESS version included the definition of private schools in the body of an earlier section ( see line 20, page 5 of the House HESS version).

Representative Tischer can answer questions that the Committee may have on the proposed Rules CS.

Open the meeting to public testimony at this time?

JACK - FOR YOUR INFORMATION The main public concern is that both the House and Senate versions limit DOE's authority to regulate private pre-schools in terms of square footage/child or child/teacher ratios. The House Rules version eliminates DOE program supervision over any totally private funded preschool. The Senate version eliminates DOE program supervision over any private pre-school that is part of an elementary school.

NOTE: DOE does not give up its authority to regulate pre-schools in regard to health and safety in either the House or Senate versions. An opinion to this effect from Keith Levy, LAA Legal Services, is included as item #6 in the Committee packet.

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Amendments proposed in  
H Rules Comm. Mtg -  
No Action taken

AMENDMENTS TO HOUSE RULES CS FOR SB 354

Sec. 2, part 8 (pg. 2, lines 24-25)

delete: that receive direct state or federal funding

insert: and private pre-elementary schools that are not in facilities associated with an elementary school that operates grades one through three.

Sec. 2, part 8 (pg. 2, lines 25-29)

restore: and over the educational component of nurseries as defined in AS 47.35.080(4); pre-elementary schools in this paragraph means schools for children ages three through five years when the schools' primary function is educational;

insert after above: and the program operates for four or fewer hours per day.

Article 2, Sec. 14.45.100 (pg.5, line 25)

insert: A facility which serves children under the age of six years and which receives state payments or subsidies is not eligible for the exemption provided by this section.

To: House Rules Committee

From: Marjorie V. Fields, Ed.D.  
National Governing Board Member  
National Association for the Education of Young Children

Re: Legislation exempting private and denominational pre-elementary schools from Dept. of Education regulation: amendment proposal.

Although I sympathize with the expressed concern for church-state separation, this legislation virtually eliminates any regulation of pre-elementary schools in Alaska since so few public pre-elementary programs exist. This removes any standards for quality preschool programs and may leave the welfare of young children at the mercy of economic factors.

Although most programs for young children are sponsored by caring and altruistic persons who wish to provide the best for their students, financial burdens can cause pressure to cut back on services. Quality programs require sufficient numbers of adults (1:4 or 1:8 depending on age of children) to provide for the unique emotional-cognitive needs of young children. Quality programs require sufficient amounts of space (35 sq. ft. per child minimum) to provide for the unique physical-cognitive needs of young children. Quality programs cost more money.

Worse yet, this legislation does not define pre-elementary schools in such a way as to distinguish them from child care programs. This means that a full-day program can avoid regulation by simply stating an educational intent. Not only does this pose a threat to the quality of Alaskan preschools, it also threatens the existence of quality child care. When child care can be provided through a "school" which saves money on space and teachers, such programs compete unfairly with those programs which must meet basic Health and Social Services guidelines for licensed child care.

Therefore I encourage the adoption of an amendment to the bill exempting private and denominational preschools from regulation. The amendment would define preschools as those programs operating 4 hours per day or less. True preschool programs are half day programs and allow children other types of environments for the other half of the day. This means that a limited or restricted environment would be less damaging. It also would eliminate the unfair economic advantage of preschool programs over child care programs.



Official Business

# Alaska State Legislature

## House of Representatives

### Committee on Rules

Pouch V  
Juneau, Alaska 99811

Phone:  
(907) 465-3764  
465-3765

#### HOUSE RULES COMMITTEE MEETING

FEBRUARY 15, 1984

AGENDA: CSSB 354(Jud)am

#### COMMITTEE FILE INDEX

- I. HCS CSSB 354(Rules) - Proposed Rules Committee Substitute
- II. HCS CSSB 354(HESS)
- III. CSSB 354(Jud)am - Senate passed version
- IV. Analysis of Proposed HCS CSSB 354(Rules)
- V. Comparison of HCS CSSB 354(HESS) & Proposed HCS CSSB 354(Rules)
- VI. Legal Opinion - Health & Safety regulation of private pre-elementary schools - (HCS CSSB 354(Rules))
- VII. Comparison of Proposed HCS CSSB 354(Rules) and CSSB 354(Jud)am
- VIII. Attorney General Opinions - HCS CSSB 354(Rules);  
HCS CSSB 354(HESS)
- IX. Alaska Statutes - Sec. 14.07.020 Duties of Department of Education

Jack

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*Senate*  
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HCS CSSB 354 (HESS)
- IX. Alaska Statutes - Sec. 14.07.020 Duties of Department of Education

Offered: 2/1/84  
Referred: Rules

*Jack's file -  
marked up copy*

Original sponsors: Faiks, Kerttula,  
Bennett, et al

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

1 IN THE SENATE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 354 (HESS)

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 pur-  
13 pose 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 encouraging private  
20 education.

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;

*Rules CS -  
deleted*

21 (8) [IN COOPERATION WITH THE DEPARTMENT OF HEALTH AND  
22 SOCIAL SERVICES,] exercise general supervision over public [AND ~~PRE-~~  
23 ~~VOCATIONAL~~ *Rules CS - Add Qualifier* 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;

*Rule CS  
Moved to  
new definitions  
Sec 14.07.020(b)*

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. *(b) Rules CS moves definition of pre-school here from AS 14.07.020*  
AS 14.30.010(b) is amended to read: *(a)(8)*

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 REGU-  
5           LATIONS 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. A facility that serves  
21 children under the age of six years and receives state payments is not  
22 eligible for the exemption provided by this section.

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

*Rules CS-  
Revised &  
Moves to  
Definitions  
Sec 14.45.140.*

1 administrative officer of the school and returned to the local public  
2 school superintendent by the parent or guardian. The school shall  
3 notify the local public school superintendent within a reasonable time  
4 if the child is no longer enrolled in or attending the school.

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

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

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

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

29 (1) is also required to administer a nationally stan-

1 dardized test that measures achievement in English grammar, reading,  
2 spelling, and mathematics; and

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

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

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

14 Sec. 14.45.140. DEFINITION. In this chapter

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

18 \* Sec. 6. AS 14.45.020 is repealed.

Alaska State Legislature

REP. MAE TISCHER  
CHAIRMAN



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

House of Representatives  
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

MEMORANDUM

TO: Representative Mae Tischer  
FROM: Bill Lovell, Staff *WML*  
DATE: February 12, 1984  
  
RE: Analysis of Proposed HCS CSSB 354 (Rules)

I have worked with Keith Levy of the Division of Legal Services to prepare the following analysis of the proposed House Rules Committee Substitute for Committee Substitute for Senate Bill 354, "[a]n Act relating to the regulation of private schools."

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 or with the right of parents to choose to have their children attend private schools while at the same time ensuring the quality of all education in the state and encouraging diversity in education.

Section 2 amends the duties of the Department of Education with respect to private education (AS 14.07.020). The bill creates a new subsection (a) in the law, including language currently in AS 14.07.020, except for the repositioning of the definition of "pre-elementary schools" and other changes indicated below. New language provides that the department will consult with the state fire marshal 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 states that the department must require physical examinations and immunizations in pre-elementary schools (AS 14.07.020(7)). Section 2 also provides that the department is authorized to supervise only those pre-elementary schools which receive direct state or federal funding. Supervision of 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)). A new subsection (b) defines pre-elementary schools, as used in this section, as schools for children ages three through five years when the schools are primarily educational in purpose.

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 compulsory attendance 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 of compulsory school age 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 school calendar and the number of students enrolled in each grade (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 tested student's parent or guardian. 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 results of which are also public information (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 courses taken at the school. The administrator of the school must certify to the department, under oath or affirmation, that these records are being maintained (AS 14.45.130). "Private school," as used in these sections, is defined as a school that does not receive direct state or federal funding. (AS 14.45.140 (1)). 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(2)).

It should be kept in mind that these provisions are not mandatory unless

Analysis of Proposed HCS CSSB 354 (Rules)

February 12, 1984

Page 3

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:WTL:cas

Alaska State Legislature

REP. MAE TISCHER  
CHAIRMAN



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

House of Representatives  
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

MEMORANDUM

TO: Representative Mae Tischer  
FROM: Bill Lovell, Staff *WLO*  
DATE: February 12, 1984

RE: Comparison of HCS CSSB 354 (HESS) and Proposed HCS CSSB 354  
(Rules)

I have prepared the following comparison of the HESS Committee version and the proposed Rules Committee version of a House Committee Substitute for Committee Substitute for Senate Bill 354, "[a]n Act relating to the regulation of private schools."

Section 1 of the proposed House Rules Committee Substitute contains no variations from the House HESS version.

Section 2 of the proposed House Rules Committee Substitute contains six variations from the House HESS version. On the page and line(s) indicated, the House Rules Committee Substitute makes the following changes:

Page 1, line 22, creates a new subsection (a), including language currently in AS 14.07.020, except for the repositioning of the definition of "pre-elementary schools" and other changes indicated below. This change is only technical, allowing the definition of "pre-elementary schools" to be included in a new subsection (b) described below.

Page 2, line 19, deletes "private" before the phrase "pre-elementary schools" on lines 19 and 20. This change is basically technical. Since the law already mandates that standards for private schools may not be more stringent than those for public schools, it follows that similar physical examinations and immunizations must be required of both public and private pre-elementary schools. Deleting the word "private," as indicated above, clarifies this intent.

Page 2, line 23, deletes "public" after the phrase "supervision over." This change becomes basically technical when taken in conjunction with the next change in this paragraph as explained on page 2 of this analysis.

Page 2, line 24, inserts "that receive direct state or federal funding" after the phrase "pre-elementary schools." This change extends Department of Education supervisory authority to include, not only public pre-elementary schools, but all pre-elementary schools, public or private, that receive any direct state or federal funding.

Page 2, lines 26 - 28, deletes the definition of "pre-elementary schools." This definition is contained substantively in the new subsection (b) below.

Page 3, lines 21 - 23, creates a new subsection (b) that includes the definition of "pre-elementary schools" previously contained substantively in AS 14.07.020 (8), except that the definition in (b) now applies to all of AS 14.07.020, where it had previously applied only to paragraph (8).

Section 3 of the proposed House Rules Committee Substitute contains no variations from the House HESS version.

Section 4 of the proposed House Rules Committee Substitute contains no variations from the House HESS version.

Section 5 of the proposed House Rules Committee Substitute contains two variations from the House HESS version. On the page and line(s) indicated, the House Rules Committee Substitute makes the following changes:

Page 5, line 25, deletes "A facility that serves children under the age of six years and receives state payments is not eligible for the exemption provided by this section." In his review of the House HESS Committee Substitute for CSSB 354, Assistant Attorney General Rick Robertson advised that the sentence indicated above was ambiguous and should be substantively modified, or deleted with subsequent changes to other related sections of the bill. Briefly, Mr. Robertson noted that the bill did not at that time authorize the Department of Education to supervise any private pre-elementary schools, beyond basic health and safety; therefore, there were no regulations from which private pre-elementary schools could be exempt. The proposed Rules Committee Substitute deletes the indicated statement; adds a new definition of private schools which prohibits exemption by pre-elementary schools that receive direct state or federal funding; and explicitly extends Department of Education authority to include pre-elementary schools that receive direct state or federal funding.

Page 7, lines 18 - 19, inserts a definition of "private school"

Comparison of HCS CSSB 354 (HESS) and Proposed HCS CSSB 354 (Rules)  
February 12, 1984  
Page 3

for these sections. This definition effectively prohibits a school that receives any direct state or federal funding from being exempt from Department of Education regulation. The addition of this definition requires the drafter to put the definition of "private school" into a new paragraph (1) and the definition of "religious school," also contained in the House HESS version, into a new paragraph (2).

A copy of the proposed Rules Committee Substitute with highlighted changes is being provided to each member of the Rules Committee by the Rules Committee staff.

WTL:cas

STATE OF ALASKA  
THE LEGISLATURE  
LEGISLATIVE AFFAIRS AGENCY

POUCHY STATE CAPITOL  
JUNEAU ALASKA 99801  
907 465 3800

MEMORANDUM

February 11, 1984

SUBJECT: Health and safety regulation  
of private pre-elementary  
schools (HCS CSSB 354 (Rules))

TO: Representative Mae Tischer  
Chairman, House HESS Committee

FROM: Keith B. Levy *KBL*  
Legislative Counsel

You have requested an opinion on the implication of HCS CSSB 354 (Rules) 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 pre-elementary schools.

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

Representative Mae Tischer  
Page 2  
February 11, 1984

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 pre-elementary schools unless some specific exemption exists. There is no such exemption in HCS CSSB 354 (Rules). 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 pre-elementary schools.

In conclusion, HCS CSSB 354 (Rules), while providing that private pre-elementary schools are no longer subject to general regulation by the Department of Education, has no effect on the ability of that department and other departments to regulate these schools with respect to health and safety.

KBL:ojb  
J3/079

Alaska State Legislature

REP. MAE TISCHER  
CHAIRMAN



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

House of Representatives  
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

MEMORANDUM

TO: Representative Mae Tischer  
FROM: Bill Lovell, Staff *lovell*  
DATE: February 12, 1984

RE: Comparison of Proposed HCS CSSB 354 (Rules) and CSSB 354  
(Judiciary) am

I have prepared the following comparison of the Proposed House Rules Committee Substitute for Committee Substitute for Senate Bill 354 and the version passed by the Senate, Judiciary Committee Substitute for Senate Bill 354, amended.

Section 1 of the proposed House Rules Committee Substitute contains no variations from the Senate version.

Section 2 of the proposed House Rules Committee Substitute contains seven variations from the Senate version. On the page and line(s) indicated, the proposed House Rules Committee Substitute makes the following changes:

Page 1, line 22, creates a new subsection (a), including language currently in AS 14.07.020, except for the repositioning of the definition of "pre-elementary schools" and other changes indicated below. This change is only technical, allowing the definition of "pre-elementary schools" to be included in a new subsection (b) described below.

Page 2, line 19, deletes "private" before the phrase "pre-elementary schools" on lines 19 and 20. This change is basically technical. Since the law already mandates that standards for private schools may not be more stringent than those for public schools, it follows that similar physical examinations and immunizations must be required of both public and private pre-elementary schools. Deleting the word "private," as indicated above, clarifies this intent.

Page 2, line 23, deletes "public" after the phrase "supervision over." This change becomes basically technical when taken in conjunction with the next change in this paragraph as explained on page 2 of this analysis.

Page 2, line 24, inserts "that receive direct state or federal funding" after the phrase "pre-elementary schools." This change extends Department of Education supervisory authority to include, not only public pre-elementary schools, but all pre-elementary schools, public or private, that receive any direct state or federal funding.

Page 2, line 23, deletes "and private pre-elementary that are not in facilities associated with an elementary school that operates grades one through three" after the phrase "pre-elementary schools." This deletion removes language that would have had a substantial negative effect on many private schools, especially small schools which are actually now advised by national private educational organizations to start their schools with a kindergarten and then add one grade with each advancing class. Other expert testimony supported deletion of the statement indicated above.

Page 2, lines 26 - 28, deletes the definition of "pre-elementary schools." This definition is contained substantively in the new subsection (b) below.

Page 3, lines 21 - 23, creates a new subsection (b) that includes the definition of "pre-elementary schools" previously contained substantively in AS 14.07.020 (8), except that the definition in (b) now applies to all of AS 14.07.020, where it had previously applied only to paragraph (8).

Section 3 of the proposed House Rules Committee Substitute contains no variations from the House HESS version.

Section 4 of the proposed House Rules Committee Substitute contains no variations from the House HESS version.

Section 5 of the proposed House Rules Committee Substitute contains six variations from the House HESS version. On the page and line(s) indicated, the House Rules Committee Substitute makes the following changes:

Page 5, line 25, deletes "A facility that serves children under the age of six years and receives state payments or subsidies is not eligible for the exemption provided by this section." In his review of the House HESS Committee Substitute for CSSB 354, Assistant Attorney General Rick Robertson advised that the sentence indicated above was ambiguous and should be substantively modified, or deleted with subsequent changes to other related sections of the bill. Briefly, Mr. Robertson noted that the bill did not at that

time authorize the Department of Education to supervise any private pre-elementary schools, beyond basic health and safety; therefore, there were no regulations from which private pre-elementary schools could be exempt. The proposed Rules Committee Substitute deletes the indicated statement, adds a new definition of private schools which prohibits exemption by pre-elementary schools that receive direct state or federal funding; and explicitly extends Department of Education authority to include pre-elementary schools that receive direct state or federal funds. Also, the phrase "or subsidies" could have been interpreted to include the tax-exempt status allowed for non-profit corporations, and could therefore have prevented any religious or other non-profit school from being exempt from supervision by the Department of Education.

Page 5, line 27, inserts "of compulsory school age" after the phrase "The parent or guardian of a child." This change becomes technical when taken in conjunction with the next change indicated below.

Page 6, line 1, deletes "of compulsory school age" after the phrase "the child." Deleting this clause here and inserting it in the place indicated above clarifies the sentence, and places the modifying clause closer to the object being modified, thus making the intent clearer.

Page 6, line 19, substitutes "grades four, six, and eight" for the Senate language "grades two, four, six, and ten." The new language in the House Rules Committee Substitute makes requirements for standardized testing in private schools more in line with requirements that public schools give student assessments in the fourth and eighth grades. The mandatory standardized test in the sixth grade is designed to act as additional assurance to effected parents that their children are progressing relatively satisfactorily, while minimizing cost to schools and parents.

Page 7, line 14, inserts "to the department" after the phrase "shall certify." This change makes it clear that administrators of private schools must certify to the Department of Education that their school is complying with the provisions of AS 14.45.100 - 14.45.130.

Page 7, lines 18 - 19, inserts a definition of "private school" for these sections. This definition effectively prohibits a school that receives any direct state or federal funding from being exempt from Department of Education regulation. The addition of this definition requires the drafter to put the definition of "private school" into a new paragraph (1) and the definition of "religious

Comparison of Proposed HCS CSSB 354 (Rules) and CSSB 354 (Judiciary) am  
February 12, 1984  
Page 4

school," also contained in the House HESS version, into a new  
paragraph (2).

WTL:cas

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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465-3603

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

February 6, 1984

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

Re: HCS CSSB 354 (HESS)

Dear Representative Tischer,

You have asked whether HCS CSSB 354 (HESS) presents legal problems.

The line between legal issues and policy issues is often unclear in controversial areas of the law. We have reviewed HCS CSSB 354 (HESS) with an eye toward the former. Accordingly, we express no view on the overall wisdom of this legislation.

HCS CSSB 354 (HESS) is structurally similar to CSHB 514 (HESS) which we addressed in our letter to you of January 23, 1984. Each bill avoids the equal protection problems which we identified during our review of SCS CSHB 357 (RIs) am S.

Although we believe that HCS CSSB 354 (HESS) presents no significant constitutional problems, there are at least two questions of statutory interpretation which could arise as this legislation is implemented.

The first question is whether the definition of pre-elementary school contained in proposed AS 14.07.020(8) adequately distinguishes between pre-elementary education and child care. We are informed that these categories are factually very similar. Child care is subject to regulation by the Department of Health and Social Services under AS 47.35.

The second question concerns the meaning of the second sentence of proposed AS 14.45.100. This sentence states that certain private pre-elementary schools are not eligible for the general exemption from state regulation contained in the first sentence of AS 14.45.100. However, this exception appears to be

superfluous since, as a result of changes made in AS 14.07.020, regulation of private pre-elementary schools would be limited to health and safety matters which the first sentence of AS 14.45.100 does not affect.

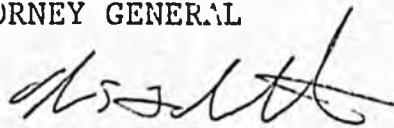
It appears that the second sentence of proposed AS 14.45.100 is intended, in part, to assure that the exemption is not available to private schools which receive public funds. If this is the case, an issue arises as to why it is limited to facilities which serve children under six years of age. We suggest that you consider deleting the phrase "which serves children under the age of six years and" or, alternatively, deleting this sentence in its entirety and adding to proposed AS 14.45.140 a definition of "private school" which addresses this issue.

We note that the addition of a definition of "private school" to AS 14.45.140 could also be used to limit coverage of AS 14.45 to elementary and secondary schools. This seems to be the intent of language which was added to proposed AS 14.45.110(a), the effect of which is limited to that subsection. As we have indicated, coverage of pre-elementary schools seems unnecessary since agency authority to regulate them is restricted by changes made in proposed AS 14.07.020.

We have previously discussed each of these questions with your staff. If you have additional questions, please do not hesitate to contact this office.

Very truly yours,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:   
Thomas H. Robertson  
Assistant Attorney General

THR:jal

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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PHONE: (907) 465-3600

465-3603

February 10, 1984

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

Re: HCS CSSB 354 (Rules)

Dear Representative Tischer:

You have asked that this office review the constitutionality of proposed HCS CSSB 354 (Rules).

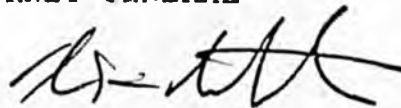
We believe that proposed HCS CSSB 354 (Rules) presents no significant constitutional problems. For a discussion of relevant constitutional principles, please refer to our July 19, 1983, review of SCS CSHB 357 (Rules) am S.

Please let us know if you have further questions in this regard.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:



Thomas H. Robertson  
Assistant Attorney General

THR:jca

July 19, 1983

x

The Honorable Bill Sheffield  
Governor  
State of Alaska  
Pouch A  
Juneau, AK 99811

Re: SCS CSHB 357(R1s) am S --  
state regulation of  
religious schools  
Our file: 388-095-83

Dear Governor Sheffield:

At the request of Emil Notti on your behalf, we have reviewed SCS CSHB 357(R1s) am S which addresses the degree to which certain religious schools are to be regulated by the state.

This bill diminishes the authority of executive agencies over all religious pre-elementary schools and over religious elementary and secondary schools which elect to comply with various requirements. The provisions of the bill, and the constitutional issues which they generate, are discussed below. We do not believe that the constitutional issues are sufficiently clear to require veto of this bill.

In order to qualify for the protections afforded by this bill, a school must be operated by a church or other non-profit religious organization that is exempt from federal taxation and does not receive direct state or federal funding. It is therefore possible that, except with respect to licensure of pre-elementary schools, executive authority over some religious schools would remain unchanged even if this bill becomes law.

Section 1 of the bill amends AS 14.07.020(8) which currently requires the Department of Education (DOE), in cooperation with the Department of Health and Social Services (DHSS), to "exercise general supervision" over public and private pre-elementary schools. The bill would delete reference to DHSS, would prohibit licensing of any pre-elementary schools, and would

eliminate authority to supervise the "educational component" of pre-elementary schools operated by a church or other qualifying religious organization.

Section 2 of the bill makes it clear that the system of voluntary accreditation of elementary and secondary schools established by AS 14.07.020(10) does not vest authority in DOE to "license" schools operated by a church or other qualifying religious organization.

Section 3 of the bill adds an exemption from compulsory public school attendance for children who attend an educational program operated by a church or other qualifying organization which meets the requirements set out in sections 4 -- 8 of the bill. The compulsory education statute, AS 14.30.010, which would be amended by sec. 3, currently exempts children who attend private schools which employ certificated teachers, who are tutored by certificated tutors, or who attend private schools in which the average student proficiency is not less than that found in nearby public schools, as measured by national achievement tests.

Sections 4 -- 8 of the bill would amend AS 14.45 to provide a means through which elementary and secondary schools operated by churches or other qualifying religious organizations can become partially exempt from state regulation. The exemption would not extend to laws relating to physical health, fire safety, sanitation, immunization, and physical examinations.

The requirements for exemption are set out in new AS 14.45.030 -- 14.45.040. New AS 14.45.030 requires that the religious school maintain monthly attendance records for each student, operate on a regular schedule for a school year of at least 180 days, and annually report to DOE the number of students in each grade and the school calendar. In addition, the parents of each child must file an annual notice of enrollment, signed by the parent and school administrator, with the local public school superintendent. The religious school must notify the superintendent if the child leaves school. New AS 14.45.035 requires that the religious schools administer at least one nationally standardized test, selected by the school from a list compiled by DOE, to children in grades 1, 3, 6, and 9. The test must measure achievement in English grammar, reading, spelling, and mathematics. The results must be maintained by the school and be made available to the child's parent or guardian and "authorized representatives" of the state. New AS 14.45.040 requires that the religious schools maintain "adequate" student records,

including records of immunizations, physical examinations, testing, and courses taken.

Finally, sec. 9 repeals AS 14.45.020 which authorizes DOE to provide final exam questions and diplomas for eighth graders in private and denominational schools. Apparently, this authority has not been exercised since well before statehood.

In general, SCS CSHB 357(R1s) am S would establish two categories of private schools, those which are operated by a church or other qualifying religious organization and those which are not. This gives rise to the legal question of whether or not the disparate treatment afforded each category is in keeping with the equal protection clauses of the state and federal constitutions.

Although courts have developed separate tests under each, the state and federal constitutions both require that there be reasons for treating these categories of private schools differently. The bill itself does not contain a statement of purpose. However, it has been characterized by supporters as an effort to accommodate the free exercise of religion.

The free exercise of religion is protected by the First Amendment to the United States Constitution and by art. 1, sec. 4, of the Alaska Constitution. Courts have developed a threefold test to determine whether state educational requirements impermissibly limit the free exercise of religion: (1) whether the regulated activity is motivated by and rooted in a legitimate and sincerely held religious beliefs; (2) the degree to which the parties' free exercise of religion has been burdened; and (3) whether the state has a compelling interest in the regulation which justifies the burden. Wisconsin v. Yoder, 406 U.S. 205, 32 L.Ed.2d 15, 92 S.Ct. 1526 (1972). The focus of this test is on the exercise of religion; "[t]he religious character of an organization does not provide a shield from regulation which no way affects religious beliefs or acts." In re Rabbinical Seminary Netzach Israel Ramailis, 450 F.Supp. 1078, 1081 (E.D. N.Y. 1978).

Unfortunately, the limits of permissible regulation have not been clearly established. On one hand, courts have acknowledged that religious schools combine religious and secular education and have invalidated state regulations which unreasonably interfered with the former. E.g., Lemon v. Kurtzman, 403 U.S. 602, 29 L.Ed.2d 745, 91 S.Ct. 2105, reh den 404 U.S. 876, 30 L.Ed.2d 123, 92 S.Ct. 24 (1971); State v. Whisner, 351 N.E.2d 750 (Ohio 1976). On the other hand, courts have acknowledged that

"if the state must satisfy its interest in secular education through the instrument of private schools, it has a proper interest in the manner in which those schools perform their secular educational function." Board of Education v. Allen, 392 U.S. 236, 247, 20 L.Ed.2d 1060, 88 S.Ct. 1923 (1968). For example, state regulations requiring certified teachers, a minimum curriculum, and state licensure have been approved. E.g., New Jersey State Board of Higher Education v. Board of Directors of Shelton College, 448 A.2d 988 (N.J. 1982); State v. Faith Baptist Church, 301 N.W.2d 571 (Neb. 1981), app. dismiss. 454 U.S. 803, 70 L.Ed.2d 72, 102 S.Ct. 75 (1982); State v. Shaver, 294 N.W.2d 883 (N.D. 1980). See also Pierce v. Society of Sisters, 268 U.S. 510, 69 L.Ed.2d 1070, 45 S.Ct. 571 (1925).

This is also an area in which courts may defer to the legislature. In State v. Rivinius, 328 N.W.2d 220, 231 (N.D. 1982), the Supreme Court of North Dakota, after approving a teacher certification requirement, indicated that "[w]e are not implying or intimating that the legislature may not work out a system that will be satisfactory to both sides -- meaning the state and the defendants -- and still accomplish the constitutional mandate." See also West Virginia State Board of Education v. Barnette, 319 U.S. 624, 638, 87 L.Ed. 1628, 63 S.Ct. 1178 (1943).

Because the United States Supreme Court has yet to resolve some of these issues, we cannot state with certainty that SCS CSHB 357(Rls) am S provides protections to religious schools beyond those which are constitutionally required. However, since it precludes various means of regulation which, at least for elementary and secondary schools, have been approved by lower courts, we believe this result to be likely. If this is true, the legislation would fall on equal protection grounds unless other reasons based on actual differences between the two categories of private schools could be found to support it. In addition, it would be subject to challenge as an aid to religion under the establishment clauses of the state and federal constitutions.

It is noteworthy that present regulatory requirements of DOE are minimal and that this bill is based on legislation, enacted in North Carolina in 1972, which has not been challenged in court. N.C. Gen. Stat. § 115-257.1, et seq. (Cum. Supp. 1979). We also acknowledge that substantial arguments can be made in its support. See generally "State Regulation of Private Religious Schools in North Carolina -- A Model Approach," 16 Wake Forest Law Review 405 (1980). Accordingly, we do not believe that veto on constitutional grounds is required.

The Honorable Bill Sheffield  
Governor  
388-095-83

July 19, 1983  
Page 5

Except as noted, this bill presents no constitutional or other major legal problems. It is possible, however, that problems of statutory interpretation could arise as DOE attempts to exercise its remaining authority in this area.

Sincerely,

Norman C. Gorsuch  
Attorney General

NCG:THR:jal

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§ 14.07.010

EDUCATION

§ 14.07.020

Section

55. Alaska School Activities Association  
59. Alaska school activities fund

Section

60. Regulations  
70. Withholding state funds

Collateral references. — 68 Am. Jur.  
2d Schools, §§ 5-7, 37-55.  
78 C.J.S. Schools and School Districts,  
§§ 83-91.

Modern status of doctrine of sovereign  
immunity as applied to public schools and  
institutions of higher learning. 33 ALR3d  
703.

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

NOTES TO DECISIONS

Quoted in *Begich v. Jefferson*, Sup. Ct. Op. No. 481 (File No. 894), 441 P.2d 27 (1968).

Anchorage School Dist., Sup. Ct. Op. No. 2160 (File Nos. 4796, 4797, 4826), 617 P.2d 490 (1980).

Cited in *Tunley v. Municipality of*

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

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

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

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

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

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

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

(7) prescribe by regulation, after consultation with the Department of Health and Social Services, standards that will assure healthful and safe conditions in the public and private schools of the state; the standards for private schools may not be more stringent than those for public schools;

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

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

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

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

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

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

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

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

The second 1978 amendment added paragraph (11).

The 1979 amendment added paragraph (12).

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

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

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CS SB 354 (JUD) am

Called:

- ✓ D. of Education - Steve Hoke
- ✓ D. of Env. Conser. - Bill Publicover
- ✓ D. of Public Safety - Paul Conger

Alaska State Legislature

REP. MAE TISCHER  
CHAIRMAN



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House of Representatives  
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

MEMORANDUM

TO: Representative Mae Tischer  
FROM: Bill Lovell, Staff *WHL*  
DATE: February 12, 1984  
  
RE: Analysis of Proposed HCS CSSB 354 (Rules)

I have worked with Keith Levy of the Division of Legal Services to prepare the following analysis of the proposed House Rules Committee Substitute for Committee Substitute for Senate Bill 354, "[a]n Act relating to the regulation of private schools."

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 or with the right of parents to choose to have their children attend private schools while at the same time ensuring the quality of all education in the state and encouraging diversity in education.

Section 2 amends the duties of the Department of Education with respect to private education (AS 14.07.020). The bill creates a new subsection (a) in the law, including language currently in AS 14.07.020, except for the repositioning of the definition of "pre-elementary schools" and other changes indicated below. New language provides that the department will consult with the state fire marshal 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 states that the department must require physical examinations and immunizations in pre-elementary schools (AS 14.07.020(7)). Section 2 also provides that the department is authorized to supervise only those pre-elementary schools which receive direct state or federal funding. Supervision of 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)). A new subsection (b) defines pre-elementary schools, as used in this section, as schools for children ages three through five years when the schools are primarily educational in purpose.

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 compulsory attendance 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 of compulsory school age 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 school calendar and the number of students enrolled in each grade (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 tested student's parent or guardian. 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 results of which are also public information (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 courses taken at the school. The administrator of the school must certify to the department, under oath or affirmation, that these records are being maintained (AS 14.45.130). "Private school," as used in these sections, is defined as a school that does not receive direct state or federal funding. (AS 14.45.140 (1)). 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(2)).

It should be kept in mind that these provisions are not mandatory unless

Analysis of Proposed HCS CSSB 354 (Rules)  
February 12, 1984  
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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:WTL:cas