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# STATE OF ALASKA THE LEGISLATURE

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## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 14, 1983

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

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

**FROM:** Keith B. Levy  
Legislative Counsel

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*File in the file  
back-up on the bill*

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ATTORNEY AT LAW  
1348 CRESCENT AVENUE  
ANCHORAGE, ALASKA 99504

SB 261 AND HB 357

Summary of the Legislation

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

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

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

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

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

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

### Constitutional Requirements

The changes set out in SB 261 and HB 357, as amended, are required to correct existing Alaskan laws which run afoul of the constitutional mandate requiring the states to avoid excessive entanglement in religious activities. The state's right to impose minimum requirements on private religious schools is very limited, because these religious activities are protected by the First Amendment of the United States Constitution and its identical counterpart in the Alaska Constitution, Art. I, sec. 4.<sup>1</sup>

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

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

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

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

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

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

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

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

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

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

Eventhough SB 261 and HB 357, as amended, would create two classes of private schools and treat them differently, these bills would not violate the Equal Protection clause of the Fourteenth Amendment. According to established legal principles<sup>5</sup>, the equal protection guarantee of the Fourteenth Amendment does not take from the state legislatures all power to classify persons or objects. The state may classify persons for the purpose of legislation. Classification is an inherent right and power of the legislature.

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

<sup>4</sup> Ibid.

<sup>5</sup> 16A Am Jur 2d, Constitutional Law, §746, et. seq.

<sup>6</sup> In addition, it must noted that the motivations for operating

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

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

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

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

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

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

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

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

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

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

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

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

\* Section 3. AS 14.45.015 is added to read:

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

\* Section 4. AS 14.45.020 is repealed.

\* Section 5. AS 14.45.025 is added to read:

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

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

Sec. 14.45.030. ATTENDANCE AND ANNUAL REPORTS REQUIRED.

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

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

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

\* Section 7. AS 14.45.035 is added to read:

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

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

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

# Christian schools vs. state government — Maine case spotlights issue

By Hilary DeVries

Staff correspondent of The Christian Science Monitor

Bangor, Maine

Standing obediently beneath a banner proclaiming, "Faith is the key in '83," the Bangor Christian School choir is practicing for its spring tour. On cue, the young, a cappella voices fill the cathedral-ceilinged auditorium: "How can I say thank you for what you have done for me? The voices of a million angels could not express my gratitude for what I am."

Such sentiments aren't reserved for choral exercises here at Bangor Christian, where the first book studied every morning is the Bible. Like the 60 or so other private fundamentalist schools in the state of Maine, Bangor Christian requires its curriculum to fully incorporate born-again Christian teachings. But now the freedom of that school, and others like it, to exercise this prerogative is being called into question.

Faced with the periodic certification of teachers, as required by state law, the Bangor Christian school is suing the state for infringement of federal civil rights law. Twenty other fundamentalist schools in Maine are joining in the suit.

"We cannot tolerate the state having final authority in selecting our teachers and curriculum," says the Rev. Her-

man Frankland, executive director of the Maine Association of Christian Schools and pastor for the 2,000-member Bangor Baptist church. "We are as opposed to the state approving our schoolteachers as we are to its approval of our Sunday-school teachers."

Rufus Brown, the Maine deputy attorney general involved in the case, sees things in a quite different light. "These schools say we can't have control over their teachers. But how should the state protect the public interest? The [fundamentalists] simply want to put whomever they choose in the classroom. And we believe that there are teachers out there who are simply unqualified."

It is the first case of its kind to go as high as a federal court. And its outcome, anticipated sometime in June, could establish a national precedent.

At issue is the need for a balance between religious freedom and states' obligations to ensure sound educational standards for all its citizens. Traditionally, mainstream parochial schools have not contested state education requirements for private schools. But such requirements are coming under fire from conservative Christian schools.

Since the mid-1970s, half a dozen cases have been brought to court by private Protestant schools, whose ranks are burgeoning. The schools contend that state licensing of private schools, certification of teachers, and curriculum guidelines are, in their cases, violations of church and state separation as guaranteed in the US Constitution's First Amendment.

The fundamentalists have lost the majority of those cases, most notably a 1981 Nebraska case where a principal was jailed for violating a court order to abide by state regulations. But a recent Michigan decision indicates that the tide may be turning in the schools' favor. In January, a Michigan judge struck down state laws requiring certification of private-school teachers and curriculums. That decision, now being appealed by the state, was later amended to apply to only the two Christian schools named in the suit.

William Ball, attorney for the schools in both the Michigan and Maine cases, says the First Amendment is at issue. "The constitutional questions we want addressed include the rights of pastors and parents to enjoy the free exercise of religion, the parental right to secure the kind of education they desire for their child." State education requirements for private schools, maintains Mr. Ball, constitute a clear violation of church and state separation.

While many Christian schools are considered "traditional schools," meaning they operate with approved textbooks, separate classrooms, and teachers for each grade level, an increasing number of fundamentalist schools are relying on a workbook curriculum. This type of educational system is causing alarm among many educators. A for-profit organization, Accelerated Christian Education (ACE) of Lewisville, Texas, publishes and sells its "total church education package" to any fundamentalist church interested in setting up a school. Supporters of the program say ACE would like a school in every fundamentalist church. ACE officials list more than 4,000 schools in the US using their materials. Attendance at these schools, they say, is "in the millions."

Indeed, all types of Christian schools have proliferated during the past decade. Concerned about everything from drugs to discipline and citing a decline in instruction that promotes Judeo-Christian values, increasing numbers of

parents have pulled their children out of public schools and put them into private Christian academies. From only a handful 10 years ago, fundamentalist Protestant schools are now estimated to number more than 5,000.

While most mainstream parochial schools — Catholic, Lutheran, and Jewish private schools — have long abided by state education requirements, the fundamentalist Christian schools are choosing to fight them. Why?

"State agencies make laws for private schools without realizing that religious schools might object," says Dr. Paul Kienel, executive director of the California-based Association of Christian Schools International. "Other parochial schools aren't as sensitive to those rules. They're also quicker to accept state and federal aid. But fundamentalist schools don't [accept public money]. They consider themselves part of the church and you don't make state rules for a church."

The Rev. Mr. Frankland agrees. "For us, this church and this school are one and the same. The school is the teaching

**'These schools say we can't have control. . . . But how should the state protect the public interest?'**

arm of the church. So the bottom line is this: Who controls the church and her ministries? Is God the overseer or is it the state? We have said the Lord Jesus Christ rules this church and not the state."

Bangor Christian School, like most other fundamentalist schools, requires that all its teachers be born-again Christians. "Our first criterion for teachers is do they feel called into a ministry of education," continues Mr. Frankland. "Needless to say we try for academic excellence, but that is not our first criterion. So we start on a totally different premise than the public schools."

Patty McLeod, a first-grade teacher at Bangor Christian for five years, is one of the many teachers in the school up for certification renewal this summer. She explains her refusal to seek state certification renewal: "A Sunday-school teacher wouldn't need certification. Besides, I don't think certification makes me a better teacher."

Others disagree. "We believe every child in the country deserves to have a fully certified teacher," says Bernard McKenna, a teacher education specialist with the National Education Association. "Certification ensures that a teacher will be qualified to teach. It's absolutely essential. We certify other professionals. Why should a person belonging to a particular religion be exempt from that?"

Bangor Baptist church members who have their children enrolled in the school — approximately 95 percent of the congregation, according to church officials — are just as adamant about the school's stance. Mrs. Glenda Garland explains that her husband has had to take an out-of-state job in order to cover the \$300-a-month school fees for their three children. But it's worth it, she says. "We want our children to learn sex education at home. We want them to learn right from wrong. In public school they were getting a lot of different moral viewpoints than what we wanted to give them."

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ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

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

May 13, 1983

MEMORANDUM

TO: Representative Sam Pestinger

FROM: Leslie Longenbaugh *LL*  
Research Staff

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

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

Maryland

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

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

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

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

2 ACN § 2-206 (3)(4).

3 ACN § 2-205.

they must conform to a state law that requires private schools that are ending operation to furnish to the state the academic records of all past and present students.

#### North Carolina

North Carolina in 1979 enacted a statute which has served as a compromise between the competing interests of religious schools and states.<sup>4</sup> For the purposes of state regulation, the law creates three types of legal nonpublic schools: 1) religious schools, defined as "private church schools or schools of religious charter"; 2) "qualified nonpublic schools" -- these institutions are either accredited by the state or an association or receive no state funds; and 3) "proprietary schools," or nonpublic schools that are operated for profit.

Schools in the first and second classifications above (religious institutions and other nonpublic schools) share the following requirements:

- a) notice to the state of the intent to begin or cease operation;
- b) maintenance of annual attendance and disease immunization records for all students (there is no requirement that these records be submitted to the state);
- c) operation on a regular schedule during at least nine months of the year;
- d) subjection to reasonable fire, health and safety inspections as required by law;
- e) administration of nationally standardized tests for all students in the first, second, third, sixth and ninth grades;
- f) administration of nationally standardized tests for all students in the eleventh grade and establishment of minimum standards for achievement on the test before graduation.

In addition, schools of these two types may choose to participate in any state-operated or -sponsored program which is available to other nonpublic schools. The statute adds that no other state laws, except health, fire and safety laws, are applicable to these schools.

Apparently, North Carolina is one of only three states that require standardized testing for students of religious schools (New York and

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<sup>4</sup> General Statutes of North Carolina, § 115C-547 through § 115C-554.

Representative Pestinger

May 13, 1983

Page 3

South Dakota are the other states). In North Carolina, the chief administrator of the religious school may choose the test, rather than having the state select the tests to be given. The tests need cover only the basic secular skills -- grammar, reading, spelling and mathematics. Records of the test scores must be available for state inspection for one year following the test.

Nonpublic schools that are operated for profit must obtain a license from the state annually. The state board of education is charged with promulgating and enforcing regulations and standards governing approval and licensure. By law, the reports solicited must include detailed information regarding curricula, costs, and instructional space. In addition, the schools must post a bond of \$1,000.<sup>5</sup>

Another difference in the requirements for licensed and exempt nonpublic schools in North Carolina is the certification of their staff. While North Carolina is one of the few states that require nonpublic-school teachers to be certified, teachers in religious schools are exempt from this provision.

#### Tennessee

The Tennessee Department of Education, by regulation, requires that all nonpublic schools report the name, age and address of all students to the local public school superintendent for the purposes of ensuring compliance with attendance laws.<sup>6</sup> Otherwise, state law requires only that the department of education inspect, approve and classify those primary, secondary and pre-elementary nonpublic schools that request such services. The approval is to be according to the standards that are used for the state's public schools.<sup>7</sup>

In 1976, the Tennessee legislature enacted legislation which prohibits the state and local boards of education from regulating the selection of faculty, textbooks or curricula of "church-related schools." The law requires that these schools meet the standards of accreditation of at least one of four nonpublic school associations. The law does require that the terms of church-related schools be as long as the public schools'.<sup>8</sup>

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<sup>5</sup> GSNC §115C-570.

<sup>6</sup> Donald Wood, Chief of Management Services, Tennessee Department of Education, Nashville; telephone: 615/741-2731.

<sup>7</sup> Tennessee Code Annotated, 49-105 § 19.

<sup>8</sup> TCA 49-5201.

Representative Pestinger  
May 13, 1983  
Page 4

The statute adds that children who attend church-related schools may transfer into the state's public school system; however, the public schools may test such students and place them at a grade level that is indicated by the results of the test.

Like other nonpublic schools in Tennessee, church-related schools may apply for state approval, and many do. Of approximately 440 nonpublic schools in the state, roughly 160, both religious and secular, have received state approval.<sup>9</sup>

#### Case Law

Mr. Essa mentioned an interest in the case law about the regulation of religious nonpublic schools. I have enclosed a copy of a law review article written about North Carolina's regulation of religious schools; this article contains a concise overview of the findings of the United States Supreme Court and state courts of last resort.

\* \* \*

If you have any questions or further needs for research, please call on us.

LL

Attachments: Annotated Code of Maryland, Education, § 2-205, § 2-206,  
§ 2-304  
General Statutes of North Carolina, Articles 39 and 40  
Tennessee Code Annotated, Chapter 52 and § 49-105  
J. Eric Evenson II, "State Regulation of Private Religious Schools in North Carolina -- A Model Approach,"  
Wake Forest Law Review, Vol. 16 1980, pages 405 to 437

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<sup>9</sup> Donald Wood, Tennessee Department of Education.

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

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

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

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

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

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

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

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

\* Section 3. AS 14.45.015 is added to read:

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

\* Section 4. AS 14.45.020 is repealed.

\* Section 5. AS 14.45.025 is added to read:

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

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

Sec. 14.45.030. ATTENDANCE AND ANNUAL REPORTS REQUIRED.

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

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

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

\* Section 7. AS 14.45.035 is added to read:

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

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

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

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

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

Mac, P. Hall, M. Davis, Koponen, S. Postinger  
Milo, P. Fischer, A. Hermann, R. Halford  
P. Mass, J. R.

May 13, 1983  
Feliciforence

HB 357 - "relating to religious schools."

Milo Fritz, Chair.

### Fairbairns

1. <sup>David</sup> Physician. — Hamilton Area Baptist Ch.  
no religion allowed in public schools i.e.  
no state encroachment in religion  
State will outlaw religious  
activities.

if allowed, state will be funding  
churches (against constitution) then  
state would license or outlaw  
churches/ministers etc.

2. Water Order - Abba Loop Christian Center  
Cheri Jacobus draft CS from N. Carolina  
statute (policy).

agree with standardized testing,  
safety, immunization

definition of religious - use of  
denominational not gov - change title  
name to "private and religious"

### Matt Su

1. Eunice Cataline - Palmer Christian School

clearly states case - supports bill.

Rebecca Cordova

3. Gary Barnes (Rev.)

questions on bill  
Ac. 3 14.45.020.

Will schools be able to give  
diplomas recognized by the state?

What is motive to rewrite  
this bill. Threat of humanism  
against will of God.

Church should better  
curriculum / higher standards.

Call - recommendations for getting state recognition?

Ketchikan

4. Vera Innes  
supports bill

5. Home

Robert Wallace  
supports minimum req. by state

Unch

6. Steven Paul Glover - son  
supports passage.

Fairbanks

7. Curtis Smith - parent of 2 in Christian school.  
supports bill.

8. Seldovia

Norma Sanders - minister, Kiski Baptist Church  
no mental exams of children  
object to regulation of church  
ministries  
object to licensing of pre-schools

9. Unalakleet

Lawrence Olson

question - "... and does not receive Fed  
and state program" does this include fed  
school lunch funding?

Jacobus - yes.

H. Uman

10. Buddy Starr - Independent Baptist Ch.

Artic Circle Chris. Sch. - Admin

support bills.

responsible for own support. complete  
separation of ch./state. Right to have  
daycare and teach as we see fit (7 days/week)

H. Uman

11. Tona Bergman

Bill must pass - no state control

12. Kay Bailey supports.

FBS

13. Donna Trombust - Eagle Forum supports

14. Jim Lick - parent

"public school system has failed miserably because God has been taken out of the school"  
wants further hearing when final draft is ready.

Mac. Brent Carney - Harwood school and Chris Jacobus working closely w/ Committee to make a suitable, constitutional bill.

Ralford emphasis of compulsory ed would only require reporting of attendance and health reasons.

Wach

15. Gary Brooks - business manager - Harwood  
pub school page did not include religious schools as constitutionally required. DOE attempted to control.

page of minutes

Orch

16. Floyd Adams

Regan says parents not govt has responsibility for ed.  
Mackin has good attitude in choices in Ed w/  
Corresp. Study etc

Mat Sn

16 Janice Morgan - Palmer Christiana Sch  
supports

Student of school: Heather Morgan

Koolrak

17 Rhona Stage  
support.

18 Sidwina

Chuck Kruppelwetter MSJ Christiana Sch. Inter  
supports loc.

concerned that community service (fire etc)  
would be interpreted as measuring state funds.  
regulations would deny the alternatives  
available.

Ed. state's expense - church schools  
a policy to the taxpayer

19. Koblerman

Kerndt Harvy - Kalifinski Christ. Sch  
schools falling because God is gone  
\$3.2 mill savings - to state in operating costs

Ft. Yukon

Wanda Struan

Support.

Ethel Adams

Support.

Wanda Struan

Support.

FBKS

Don Grassman - parent

Support.

John Baker - Senior Park Bible Church, pastor  
glad to be able to avoid court fight over  
freedom of schools (rel.)

Ann Tucker - pastor, Minichik

achievement in schools above average.

Concerned about pre-school.

Wendy Jack - sec 1 section 1 change to

report 14.07.20 (a) - pre-elementary should be  
exempt.

Don Glover (son)

Mrs. Green

had parallel bill to protect private  
schools from HESS to measure

Cherie Jacobus

attney-drafter

wanted to avoid future problems  
that occurred in the cover 48"

\* "...that including religious schools  
in 14.45.140(?)

\* sec. 5 - last word "the parents shall  
notify the public sch. superintendent"  
Want the religious school to notify

\* "direct financial state or federal funding"  
and letter of intent.

Paul Carney - Charlotte Academy, Principle  
He 13 yrs had a good relationship of  
P.O.E. for dem. reg's planning.

\* Dir sec 6 last sentence add language  
provision to enable dept. to obtain copies of the sch. calendar  
and an parent consent by grade.  
Steve Hale

Nat. Standard  
N. Carolina requires comparable test in 11th grade

and establish minimum requirement for  
criteria for graduation.

William E. Brown Principal Glacier Valley Baptist Academy

Testing - competency based is not required  
in public schools. They take SCA's  
yearly.

attendance - opposed. no requirement is  
enforced on attendance.

double standards in these areas. keeps unnecessary  
no question on quality.

Belle Polue - At Church of life

SB 261 AND HB 357

Summary of the Legislation

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

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

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

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

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

## Constitutional Requirements

The changes set out in SB 261 and HB 357, as amended, are required to correct existing Alaskan laws which run afoul of the constitutional mandate requiring the states to avoid excessive entanglement in religious activities. The state's right to impose minimum requirements on private religious schools is very limited, because these religious activities are protected by the First Amendment of the United States Constitution and its identical counterpart in the Alaska Constitution, Art. I, sec. 4.<sup>1</sup>

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

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

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

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

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

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

protected as fundamental rights.<sup>4</sup>

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

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

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

Eventhough SB 261 and HB 357, as amended, would create two classes of private schools and treat them differently, these bills would not violate the Equal Protection clause of the Fourteenth Amendment. According to established legal principles<sup>5</sup>, the equal protection guarantee of the Fourteenth Amendment does not take from the state legislatures all power to classify persons or objects. The state may classify persons for the purpose of legislation. Classification is an inherent right and power of the legislature.

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

<sup>4</sup> Ibid.

<sup>5</sup> 16A Am Jur 2d, Constitutional Law, §746, et. seq.

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

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

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

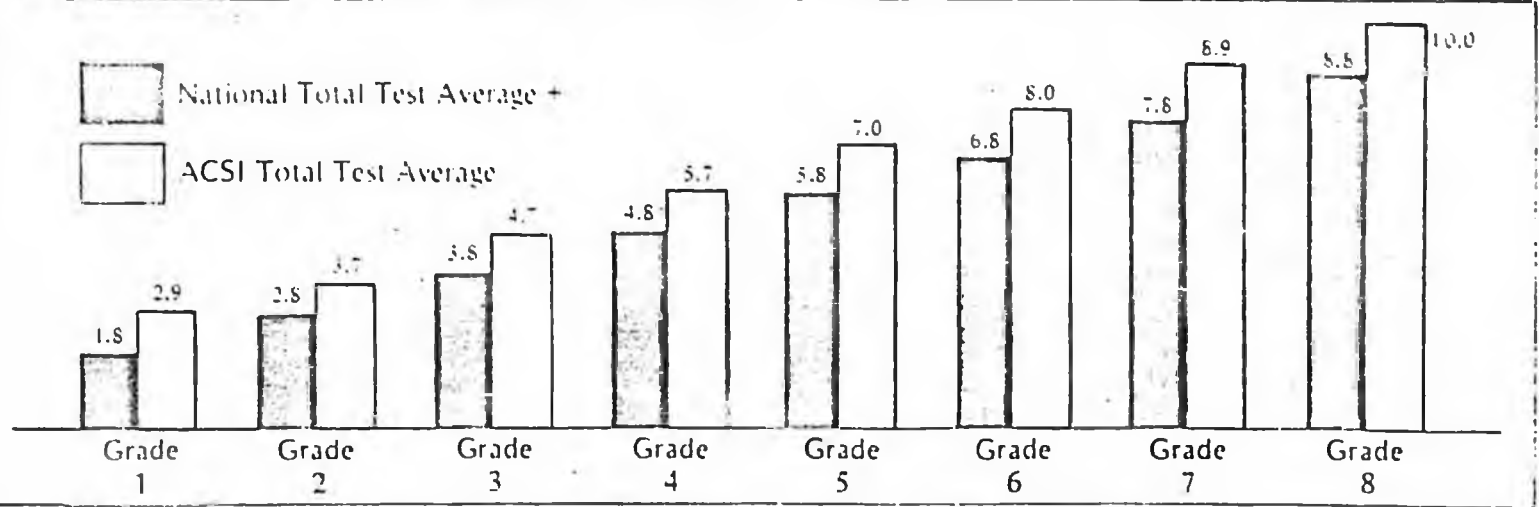
In summary, the present law violates both the United States Constitution and the Alaska Constitution. SB 261 and HB 357, as amended, balance the state's interest in ensuring that each child receives a good education with the fundamental right to religious freedom and should be adopted.

ACSI students score higher than the National Average!



Association of Christian Schools International  
1981-82 School Year

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



1<sup>st</sup>

graders are 11 months *above* the National Average

2<sup>nd</sup>

graders are 9 months *above* the National Average

3<sup>rd</sup>

graders are 9 months *above* the National Average

4<sup>th</sup>

graders are 9 months *above* the National Average

5<sup>th</sup>

graders are 12 months *above* the National Average

6<sup>th</sup>

graders are 12 months *above* the National Average

7<sup>th</sup>

graders are 11 months *above* the National Average

8<sup>th</sup>

graders are 12 months *above* the National Average



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

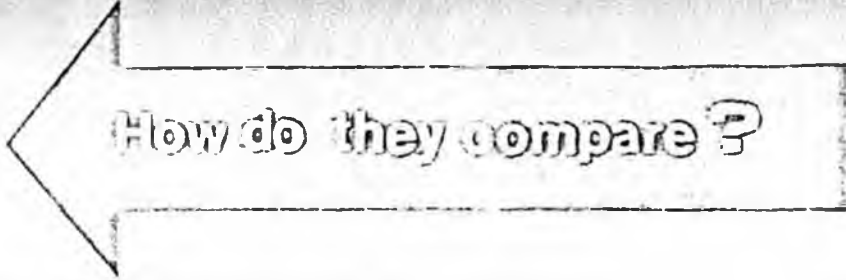
+ TOTAL TEST INCLUDES:

vocabulary  
reading  
word study skills

math  
spelling  
language

social science  
science  
listening

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

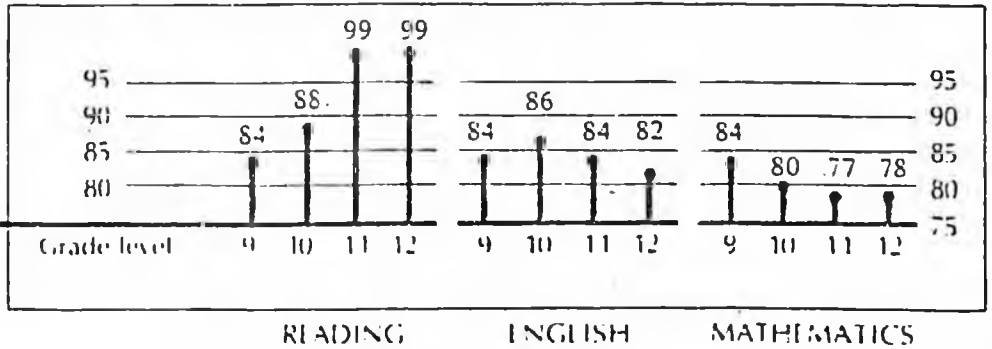


ACSI PERCENTILE RANKS \*

TOP QUARTER  
OF THE  
NATIONAL GROUP

75

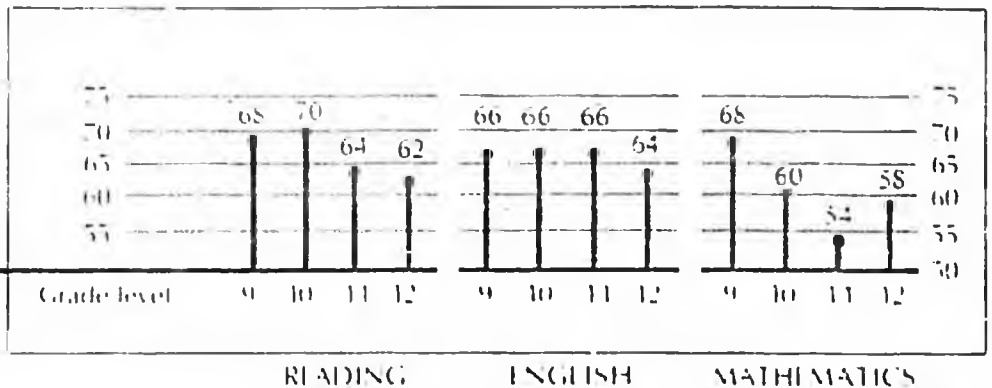
National Average  
75th percentile



NATIONAL  
AVERAGE

50

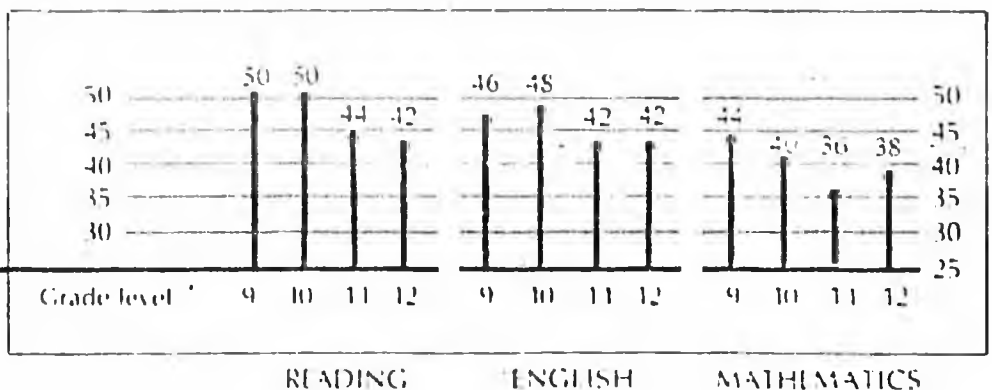
National Average  
50th percentile



BOTTOM QUARTER  
OF THE  
NATIONAL GROUP

25

National Average  
25th percentile



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

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

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

## Article 2. Physical Examinations.

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

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

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

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

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

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

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

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

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

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



# CHRISTIAN SCHOOL COMMUNICATOR

## AACS NATIONWIDE STUDENT ACHIEVEMENT TESTING PROGRAM

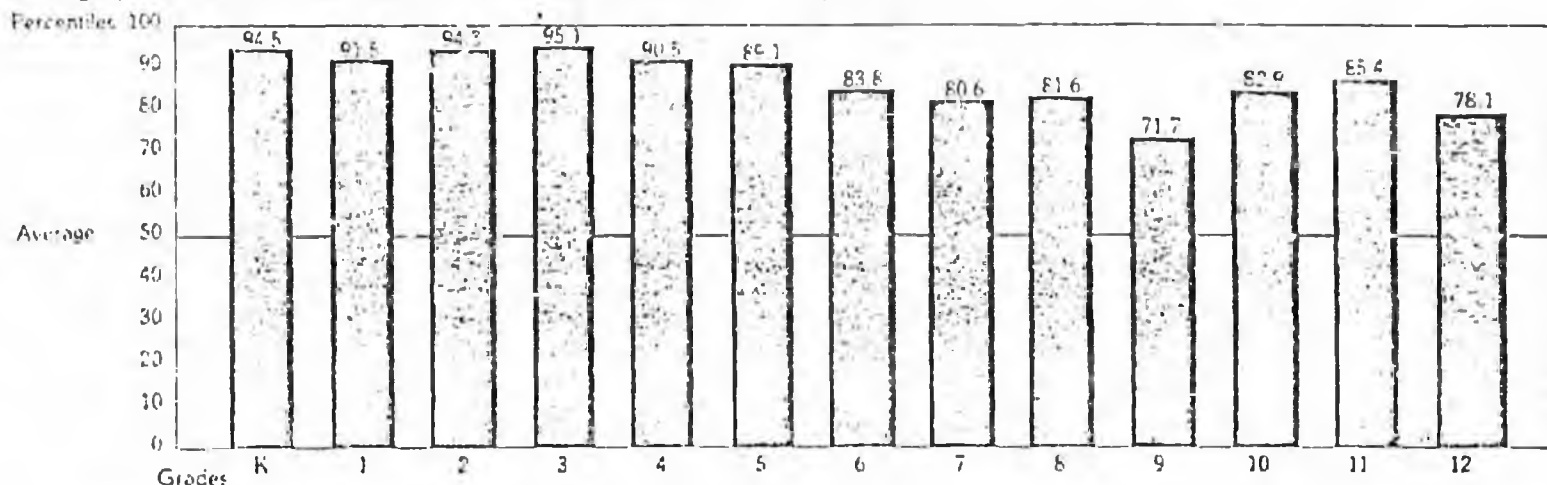
By Dr. Bruce Jackson, Educational Director  
American Association of Christian Schools

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

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

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

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



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

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

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

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

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

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

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

Levv  
5/13/83 ✓

Original sponsors: Fritz, Tischer,  
Pestinger, et al

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 357 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

10 (8) in cooperation with the Department of Health and Social  
11 Services, exercise general supervision over public and private pre-  
12 elementary schools and over the educational component of nurseries as  
13 defined in AS 47.35.080(4) excluding pre-elementary schools and nur-  
14 series operated by a church or other nonprofit religious organization  
15 that is exempt from federal taxation and does not receive <sup>direct financial</sup> state or  
16 federal funding; pre-elementary schools in this paragraph means  
17 schools for children ages three through five years when the schools'  
18 primary function is educational;

19 \* Sec. 2. AS 14.30.010(b)(1) is amended to read:

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

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

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

26 (C) except as provided in (D) of this paragraph,  
27 attendance at a private school in which the average student  
28 proficiency is not less than the average proficiency found in the  
29 public schools in the area as measured by national achievement

1 tests; the department with assistance from representatives of the  
2 private schools shall adopt [PROMULGATE] regulations defining the  
3 subject areas to be tested and the minimum average scores to be  
4 achieved; or

5 (D) attendance in an educational program operated in  
6 compliance with AS 14.45 by a church or other nonprofit religious  
7 organization that is exempt from federal taxation and does not  
8 receive state or federal funding;

9 \* Sec. 3. AS 14.45 is amended by adding a new section to read:

10 Sec. 14.45.025. EXEMPTION FROM EDUCATION LAWS. A religious  
11 school that complies with this chapter is exempt from other provisions  
12 of state law and regulations relating to education except laws and  
13 regulations relating to health, fire safety, sanitation, immunization,  
14 and physical examinations.

15 \* Sec. 4. AS 14.45.030 is amended to read:

16 Sec. 14.45.030. ATTENDANCE AND ANNUAL REPORTS REQUIRED. (a)  
17 Except as provided in (b) and (c) of this section, teachers [TEACHERS]  
18 and others in charge of private or denominational schools shall make  
19 regular monthly attendance reports and annual reports to the commis-  
20 sioner in the same manner as teachers and superintendents in the  
21 public schools.

*Not including AS - - -*

22 \* Sec. 5. As 14.45.030 is amended by adding new subsections to read:

23 (b) The parent or guardian of a child enrolled in a religious  
24 school that complies with this chapter shall file annual enrollment  
25 and attendance records for the child with the public school superin-  
26 tendent for the area in which the child resides on a form provided by  
27 the public school superintendent. The form shall be signed by the  
28 parent and the chief administrative officer of the religious school  
29 and returned to the public school superintendent by the parent. The

*School*  
 [parent] shall notify the public school superintendent immediately if the child is no longer enrolled in or attending the religious school.

(c) A religious school that elects to comply with this chapter shall maintain monthly attendance records for each student enrolled in the school and shall operate on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year. *Copies of School Calendar, Enrollment Count by grade*

\* Sec. 6. AS 14.45 is amended by adding new sections to read:

Sec. 14.45.035. STANDARDIZED TESTING REQUIREMENTS. (a) A religious school that elects to comply with this chapter shall administer a nationally standardized test selected by the chief administrative officer of the religious school to all students enrolled in grades one, three, six, and nine <sup>and 12</sup> at least once each school year.

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

(c) A religious school shall maintain records of the results of the nationally standardized tests and the records shall be made available to the parent or guardian of the student, ~~and~~ <sup>and</sup> to authorized representatives of the state.

Sec. 14.45.040. DEFINITION. In this chapter, "religious school" means a school operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding.

\* Sec. 7. AS 44.27.020(1) is amended to read:

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

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programs of postsecondary education or an educational program operated in compliance with AS 14.45 by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding;

\* Sec. 8. AS 14.45.(20 is repealed.