

S B

442

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 2/7/90

FURTHER: Judiciary
Finance

Date of 5-Day Notice: 2/8/90
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2/22/90

H E S S

Committee considered

SB 442

"An Act allowing a public or private school to adopt a policy authorizing the use of corporal correction."

and recommended:

replace with _____ CS SB 442 (HESS) same title
[] attached amendment(s) [] new title

[] _____ letter of intent adopted

[] do pass

[] do not pass

[] no recommendation

individual recommendations

[] further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

[] fiscal note(s) _____

zero fiscal note(s) _____
Dept. of Education

[] appropriation-no fiscal note

[] Governor's bill w/fiscal note

SIGNING DO PASS:

[Signature]
Tim Kelly

OTHER RECOMMENDATIONS:

Al Adams - No Rec

Paul Fresh (Do Pass)
Chair: Signature and Recommendation

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Education
 Title: Allowing a public or private BRU: _____
school to adopt a policy. . . corporal correction
 Sponsor: Coghill Components: _____
 Requestor: Senate HESS

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Changes in CS5B442 (HESS) have no fiscal impact. This fiscal note is appropriate. Projections of no fiscal impact would continue through 1996.

DCM-5-HESS

Prepared by: Mary Hakala
 Division: Commissioner's Office

Phone: 465-2800
 Date: 5/9/90

Approved by Commissioner: William G. Demmert
 Agency: Education

Date: 5/9/90

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor

FISCAL NOTE

REQUEST: _____

Revision Date: _____ Agency Affected: Education
 Title: Allowing a public or private BRU: _____
school to adopt a policy. . . corporal correction
 Sponsor: Coghill Components: _____
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CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

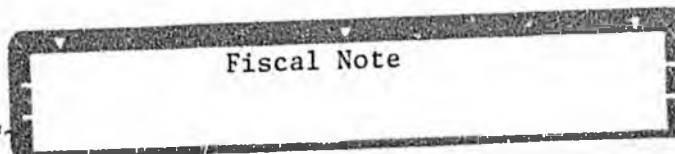
ANALYSIS : (Attach a separate page if necessary)

Prepared by: Mary Hakala Phone: 465-2800
 Division: Commissioner's Office Date: 5/9/90

Approved by Commissioner: William G. Demmert Date: 5/9/90
 Agency: Education

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget



6-1899E✓
Ford
2/16/90

Original sponsor(s): SEN. COCHILL, Fischer

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 442 (~~HESS~~)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act allowing a public or private school to adopt
7 a policy authorizing the use of corporal correction."

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

9 * Section 1. AS 14.30 is amended by adding a new section to read:

0 ARTICLE 9. CORPORAL CORRECTION.

1 Sec. 14.30.700. CORPORAL CORRECTION. The principal of a public
2 or private school, or a person employed by or contracting with a
3 public or private school who is authorized by the principal, may
4 impose or cause to be imposed corporal correction on a student if the
5 corporal correction is authorized under written guidelines adopted by
6 the governing body of the public or private school and is administered
7 in the presence of a parent, legal guardian, or person designated by
8 the parent or legal guardian. In this section, "corporal correction"
9 means the application of physical force for disciplinary purposes upon
10 a student who does not comply with the rules of the public or private
11 school.

22
23
24
25
26
27
28
29
*Any other
Time out
rooms*

Senator John B. (Jack) Coghill

Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465-4797

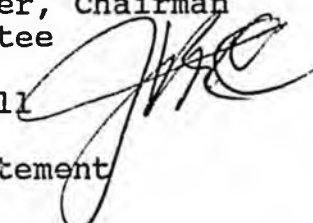
Box 55028
North Pole, Alaska 99705
(907) 488-0862



MEMORANDUM

DATE: February 12, 1990

TO: Senator Paul Fischer, Chairman
Senate HESS Committee

FROM: Senator Jack Coghill 

SUBJECT: SB 442 Sponsor Statement

Senate Bill 442, "An Act allowing a public or private school to adopt a policy authorizing the use of corporal correction" is scheduled to be heard in your committee today.

As I'm sure you are aware, in June of 1989, the State Board of Education adopted regulations which affect all public and private schools in Alaska. These regulations take the authority to administer corporal correction away from the governing body of each school. They are in direct conflict with the separation of church and state, and with state law giving primary control to local school boards. Furthermore, AS 47.17 is our Child Protection Act. This Act protects children from physical injury that may result from disciplinary actions associated with school, home or any other child care environment.

I don't believe that the State Board of Education is staying within the education statutes (Title 14) which do not prohibit the use of corporal correction. We need to give this authority back to the governing body of each school where it belongs.

I appreciate you scheduling SB 442 to be heard in your committee in such a timely manner. Please give it your full consideration.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITAL
JUNEAU ALASKA 99811
907 455 3800

RECEIVED

MEMORANDUM

July 31, 1989

SUBJECT: Corporal punishment regulations
(Work Order No. 6-1550)

TO: Representative Peter Goll
Administrative Regulation Review Committee

FROM: Michael F. Ford *M.F.*
Legislative Counsel

You have asked if recent regulations adopted by the state Board of Education regarding corporal punishment are a proper exercise of the board's authority and if the regulations conflict with any other state law. As explained in this memo, I believe that the regulations are within the statutory authority of the state board, and do not conflict with existing state law.

1. Are the regulations a valid exercise of the board's authority?

Under AS 14.07.060 the state board is required to adopt regulations "necessary to carry out the provisions of" title 14. Regulations must be adopted under the Administrative Procedure Act (AS 44.62). Under AS 14.07.020, the Department of Education is required to exercise general supervision over public schools, and to impose by regulation, standards that will assure "healthful and safe conditions" in both public and private schools of the state. While it is arguable that corporal punishment is not a health issue, the state board did receive evidence of both the physical and psychological consequences of corporal punishment. It is also significant that the board has narrowly defined "corporal punishment" as physical force applied for disciplinary purposes. Finally, given the broad authority of the state board and the department over public schools the adoption of regulations prohibiting corporal punishment appears to be within the authority of the state board.

Leg. Legal Opinion

Representative Peter Goll
Page 2
July 31, 1989

Regarding private schools, under AS 14.45.100 the state board does have the authority to impose regulations that relate to physical health. The regulations do not prohibit corporal punishment in private schools, but merely require adoption of a written policy and specifies elements that the policy must contain. Again, while the relationship between health and discipline can be argued, the connection seems sufficient to justify the authority exercised by the state board.

2. Does the prohibition of corporal punishment conflict with AS 11.81.430 or any other state statute?

Under AS 11.81.430(a)(2), a teacher may use reasonable and appropriate nondeadly force upon a student, if authorized by school regulations. The use of force authorized under AS 11.81.430, relates to those instances in which the force would otherwise constitute an offense under Title 11. For example, physical force exercised by a teacher that might constitute a criminal assault is not a crime, if it is justified under AS 11.81.430(a)(2). Therefore, it appears that the purpose of this statute is to avoid criminalizing certain behavior and not to generally authorize the use of corporal punishment in public schools. Assuming that is true, then that purpose is not in conflict with regulations prohibiting corporal punishment adopted under Title 14. While not entirely clear, I believe that the justification provisions in AS 11.81.430(a)(2) do not authorize the use of corporal punishment, but are exceptions to what would otherwise be criminal behavior.

Aside from the language in AS 11.81.430, I cannot find any other state statute that would arguably relate to the corporal punishment regulations adopted by the state board.

I have enclosed additional materials relating to the regulations adopted by the state board, including a transcript of a public hearing on the issue. If you have further questions, please contact me.

MFF:gc:mi
G11/030

Enclosure

STATE OF ALASKA

DEPARTMENT OF EDUCATION

STEVE COWPER, GOVERNOR

GOLDBELT PLACE
801 WEST 10TH STREET
P.O. BOX F
JUNEAU, ALASKA 99811-0500

MEMORANDUM

State of Alaska
Department of Education

TO: Interested Parties

DATE: June 15, 1989

FILE NO:

TELEPHONE NO: 465-2800

Steve Hole
FROM: Steve Hole
Deputy Commissioner

SUBJECT: Corporal Punishment
Regulations

The State Board of Education on June 5, 1989 approved a regulation banning the use of corporal punishment in public schools. The board also approved a regulation requiring private schools that elect to administer corporal punishment to adopt policies governing its use.

The regulations approved by the Board are attached.

CORPORAL PUNISHMENT REGULATIONS
Alaska State Board of Education
Approved June 5, 1989

4 AAC 07.010 is amended by adding a new subsection to read:

(c) The use of corporal punishment in Alaska public schools is prohibited. (Eff. / / ; Register)

Authority: AS 14.07.020(a)(1)
AS 14.07.020(a)(2)
AS 14.07.020(a)(7)
AS 14.07.060

4 AAC 07.900 is adopted to read:

4 AAC 07.900. DEFINITIONS. As used in this chapter

(1) "corporal punishment" means the application of physical force to the body of a student for disciplinary purposes. It does not include the use of reasonable and necessary physical restraint on a student to protect the student or others from physical injury, to obtain possession of a weapon or other dangerous object from a student, to maintain reasonable order in the classroom or on school grounds or to protect property from serious damage or destruction.

(Eff. / / ; Register)

Authority: AS 14.07.020(a)(1)
AS 14.07.020(a)(2)
AS 14.07.020(a)(7)
AS 14.07.060

4 AAC 42.200 is adopted to read:

4 AAC 42.200. CORPORAL PUNISHMENT IN PRIVATE SCHOOLS. (a) Each private school that operates a pre-elementary, elementary, or secondary education program must adopt a written policy governing the use of corporal punishment, as that term is defined in 4 AAC 07.900. Unless the policy prohibits corporal punishment, it must

(1) describe the role of the person or persons authorized to administer corporal punishment;

(2) describe the circumstances under which corporal punishment may be used;

(3) describe the type and amount of corporal punishment permitted, including any instruments that may be used;

(4) describe any requirements governing privacy or the presence of witnesses; and

(5) require that parental consent must be obtained before corporal punishment is used. The consent may be given before each use of corporal punishment or a general consent for a period of time may be used.

Corporal Punishment Regulations

(b) The requirements of (a) of this section do not apply to a school in which only the children of a single family are enrolled, and the schooling is provided by the parent or legal guardian of the children.

(c) Each school required to have a policy under (a) and (b) of this section must distribute its current policy to the parents of each student and must have its current policy on file with the Alaska Department of Education, P.O. Box F, Juneau, Alaska 99811. Corporal punishment may be administered only in accordance with the policy on file with the department.

(d) Because it relates to the physical health of private school students, exempt schools under AS 14.45.100 -- 14.45.130 are not exempt from this regulation. (Eff. / / ; Register)

Authority: AS 14.07.020(a)(7)
AS 14.07.060
AS 14.45.100

P.O.Box 770029
Eagle River, Ak. 99577
Phone (907) 688-6888

May 22, 1989

Mr. Barney Gottstein, President
State Board of Education
P.O.Box F
Juneau, Ak. 99811

Dear Mr. President:

I have witnessed the violence and immoral behavior in the elementary, junior hi & high schools in Eagle River as late as 1988. As a grandparent, I urged my children to send their kids to a private school where that type behavior is not condoned or tolerated, and education has a priority.

Your proposed changes to the State Education Regulations on all forms of corporal punishment are unsatisfactory and unnecessary. These changes appear to be designed and motivated by some unstated agenda.

Let's get down to the basics. The public school system in Alaska is out of control. There is little, if any, protection for our children in school who become prey to violence inflicted by contemporaries, and there is little evidence that imparting knowledge(education) has any priority in the local schools.

Your problems in the school system are much more severe than corporal punishment and a make-work reporting scheme. You must look: get down in the trenches. Go see the overcrowded classroom, the teacher with an overload or the kid so stoned he/she bumps into walls and cars. How about the kid who can neither read nor write graduating from the Anchorage school system! Don't let someone tell you that these are isolated incidents. 'Tis more normal than unusual.

The worst part of this whole saga is that we, in the business community, are expected to hire these dysfunctional graduates. So, over, \$6300/student/year is spent and the product is flawed. What a crying shame!

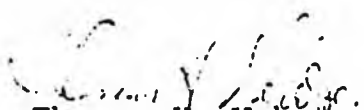
You are a man of many achievements and recognized as a leader in the business community. I, like you, recognize that 99.99% of all actions by a man are volitional: we always have

Letters of Support et.al.

in the regulation of the state education. I am very disappointed that you have failed to exercise leadership in a most trusted position: one that ultimately affects our children for the rest of their lives. You have had the opportunity to influence for good and failed. Thus, your many achievements pale in view of this most serious event.

Who really cares about a few spanked butts! Let's get down to the real issues. Hath education a priority in this state?

Sincerely,



Thomas H. Webster

cc
Senator Sam Cotten
Senator Rick Halford
Representative Randy Phillips
Governor Steve Cowper

Rolf W. Numme
8402 Decoy Blvd.
Juneau, AK 99801
May 23, 1989.

William G. Demmert, Commissioner
State of Alaska, Department of Education
P. O. Box F
Juneau, AK 99811-0500

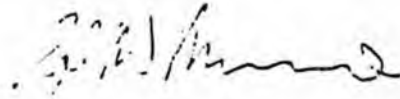
Dear Sir:

I am writing this letter in regards to the Department of Education's proposed regulations which would require private schools to submit a plan to the Department regarding our use of corporal punishment. As a concerned citizen who supports private Christian schools, I am strongly opposed to any regulations which would interfere with the maintaining of discipline within our schools.

As a Christian, I believe that corporal punishment, when used in conjunction with solid moral training which our schools provide, is very beneficial to the character development of a child. I believe that the church is an extension of the home and the school, an extension of the church and home. In short, values imparted in the school should be consistent with the values of the home and church.

The regulations which the Department is proposing, therefore, are a direct infringement on my basic constitutional rights. I brought my wife and family to Alaska six years ago because of the freedom which was available here in Alaska to set up schools in which we could teach our children the values consistent with our Christian faith. Therefore, I would encourage you and the Department to take this and the sentiments of other like-minded Christians into consideration.

Respectfully,



Rolf W. Numme

May 12, 1989
POB 526
Delta Junction
Alaska 99737

William G. Demmert
Commissioner
Department of Education
Goldbelt Place
801 West 10th Street
P.O. Box F
Juneau , Alaska
99811-0500

Reference: Memorandum 89-08 / Corporal Punishment

Dear Sir:

I am totally opposed to this proposed regulation of prohibiting corporal punishment in public schools and I am opposed to any attempt to regulate corporal correction in any private or 'denominational' school.

Parents are the God given authority over their children. If parents in a local community vote to enact this sort of legislation for their public school then so be it. I am opposed to a State Department dictating to a local community whether or not their children may receive corporal correction from their local public school. I am sure that parents who do not want their children corrected physically may simply inform the principal's office and their wishes would be fulfilled.

The regulation proposal to control corporal correction in private schools again preempts the parental authority over their children. Any parent who entrusts their children to the non-public sector has already counted the cost for this type of education and I am quite sure if they are not satisfied with the school policies they could either withdraw the student or as stated above insist that their child be exempted from corporal correction by the school staff.

I am alarmed that this sort of State control would be attempted here in Alaska. Our state was founded by independent men and women who traditionally valued the freedoms the forefathers of the United States of America bequeathed to its citizens. I see this type of regulation attempt as an affront to a parent's right to see that his children are raised in the manner that he wishes.

Sincerely,

Howard Echo-Hawk

cc: The Delta Paper
Fairbanks News Miner
Anchorage Daily Times
Anchorage News
Tok Mukluk News
Copper Valley Views
Copper Valley Country Journal
Nome Nugget
Juneau Daily Paper
Representative Dick Schultz
Senator Jack Coghill
Governor Cowper
Delta Public School Board

All Newspapers listed in the 89 milepost.

Senator John B. (Jack) Coghill
Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465-4797

Box 55028
North Pole, Alaska 99705
(907) 488-0862



May 25, 1989

Commissioner William Demmert
Department of Education
P.O. Box F
Juneau, AK 99811

Dear Commissioner Demmert:

For the second time in two years, I would like to communicate my strong objections to your department's proposed regulations prohibiting corporal punishment in public and private schools.

These proposed regulations are an unnecessary intrusion of state government into the administrative policies established by local public school boards. They also represent an unconstitutional intrusion into the administration of schools with religious affiliations. I also believe there are serious implications for rural settlements where children are taught at home, by one or more of the available adults who may or may not be a parent or legal guardian to each of the children.

Contained in your "Notice of Proposed Changes in the Regulations of the State Board of Education" is the statement that this proposed action "is not expected to require an increased appropriation." I believe you have failed to consider the appropriation that would be necessary for the Department of Law to defend the unconstitutional relationship of this action with respect to private schools.

You have also neglected to recognize how the review of the private schools disciplinary policies and reporting requirements would be administered by your department staff, if these regulations are adopted. The implication is that if existing staff has the time to deal with the paper work these regulations will generate, there must be excess funds and personnel within your department's budget.

You will recall that the legislature has repeatedly considered banning corporal punishment in our schools. The legislation to accomplish this has repeatedly failed. These proposed regulations constitute an "end run" of the legislative process. The legislative intent of "physical health"

May 25, 1989

contained in AS 14.45.100 --14.45.130 does not encompass corporal punishment.

AS 47.17 was enacted in 1971 to specifically address the potential "harm" to children these proposed regulations appear to be concerned with. You will recall that AS 47.17 is our Child Protection Act. This Act more than adequately protects our school aged children from potential physical injury as a result of disciplinary actions, that may be associated with any school, home, or child care environment. To breach the constitutional division of church and state, or to breach the the relationship of the family with the state, in any manner other than those intrusions that presently exists, is clearly not within your departments administrative authority.

I strongly urge you to withdraw the proposed regulations concerning corporal punishment, contained in Memorandum Number 89-90.

It is clear to me that these regulations will only create a nightmare of paper work for both the private and home schools of this state, and for your agency. This added paper work serves no function other than to increase the cost of private and home education and they will eventually result in added nonfunctional costs of government. I find this sort of proposed regulatory action irresponsible to the needs our children's education.

Please consider all the ramifications your proposed regulation on this matter will have. I believe you will once again come to the same conclusion I have. Your most prudent decision is to withdraw the proposal.

Sincerely,



Senator John B. (Jack) Coghill

Alaska State Legislature

REPRESENTATIVE
MIKE W. MILLER
P.O. Box 55094
North Pole, Alaska 99705
(907) 488-2687

District 18
North Pole
Badger Road
Eielson
Moose Creek
Salcha

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-4976



House of Representatives

March 16, 1988

The Honorable William G. Demmert
Commissioner, Department
of Education
P.O. Box F
Juneau, Alaska 99811

Dear Commissioner:

As members of the Alaska State Legislature, we would like to register our objection to the regulation proposed in your departmental memorandum 88-14 which would prohibit the use of corporal punishment in all Alaskan schools.

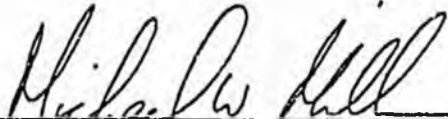
You are undoubtedly aware that legislation to ban the use of corporal punishment has been considered by the Legislature during the last three legislative sessions. Despite these attempts to institute a statewide ban, corporal punishment is currently permitted at the discretion of local school boards. We believe local school boards are the proper deliberative bodies to decide what type of discipline shall be administered in their respective school districts. We object to promulgation of regulations having the same effect as legislation which has repeatedly been denied passage.

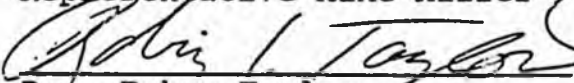
We would like to register our strong objection to the inclusion of private schools in the proposed regulation. In a joint meeting of the House and Senate Health, Education and Social Services Committees, which took place on March 6, 1986, extensive testimony was taken on Senate Bill 282 and House Bill 480. Testimony at this hearing indicated extensive public support for the right of parents to enroll their children in private educational programs which embraced more rigorous curriculum and disciplinary standards than most public schools. The testimony highlighted the fact that the private schools across the state were successful in obtaining deregulation of their programs in 1984 and suddenly legislation was under consideration which would begin to re-regulate them. We believe this argument is still valid and take exception to the inclusion of private schools in the proposed regulation.

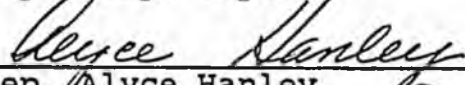
Commissioner Demmert
March 16, 1988
Page 2

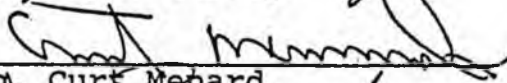
Commissioner, we respectfully request that the Department of Education withdraw the corporal punishment regulations proposed in its memorandum number 88-14 dated February 22, 1988.

Sincerely,

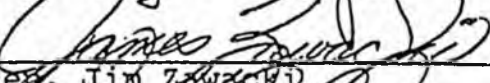

Representative Mike Miller

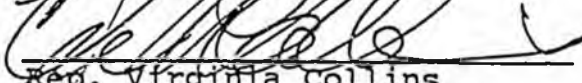

Rep. Robyn Taylor

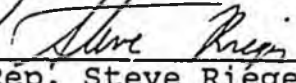

Rep. Alyce Hanley

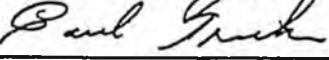

Rep. Curt Mehard


Rep. Fritz Pettyjohn

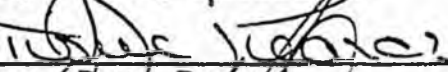

Rep. Jim Zawacki

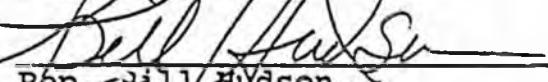

Rep. Virginia Collins

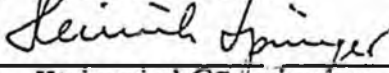

Rep. Steve Rieger

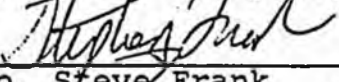

Senator Paul Fischer


Rep. Randy Phillips

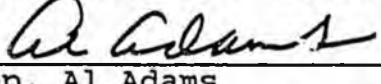

Rep. Drue Pearce

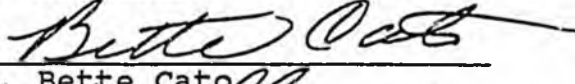

Rep. Bill Hudson

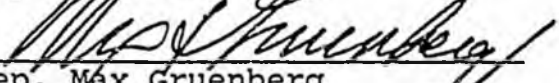

Rep. Heinrich Springer


Rep. Steve Frank


Rep. H.A. "Red" Boucher


Rep. Al Adams


Rep. Bette Cato


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WILLIAM BENTLEY BALL

May 4, 1989

Hon. Barney Gottstein
President
State Board of Education
P.O. Box F
Juneau, AK 99811

Re: Draft Regulations on Corporal Punishment
Our File No. 605.88

Dear Mr. Gottstein:

I write you today as national counsel to Association of Christian Schools International (ACSI). ACSI embraces in its membership 2,471 evangelical Protestant schools throughout the United States. Its members in Alaska are deeply concerned over the proposed regulations pertaining to corporal punishment which have been proposed by the Alaska Department of Education. They have sought my legal opinion as to these. Having reviewed the draft regulations in light of applicable legal considerations, I thought I should send my opinion on to you and your Board members. Because you and I are total strangers one to another, I have enclosed a brief summary statement of my legal background.

Before attempting to explore the legal issues which may have bearing on the proposal, I feel it important to assure you that my clients deeply appreciate the humane interests which lie behind our state and federal laws for the protection of children. In no sense do ACSI schools deny the right of society to enact reasonable laws for the common good.

Hon. Barney Gottstein
May 4, 1989

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Having studied the draft changes to the Administrative Code, I believe them to overstep what is legally permissible. First, the proposed 4 AAC 42.200 is clearly in conflict with relevant Alaskan statutory law. Second, irrespective of Alaskan statutes, it would unconstitutionally infringe on the religious rights of those non-tax-aided religious schools whose doctrinal principles govern school discipline.

As to my first point: Alaska's private school enactment of 1984 contains a provision exempting all religious or other private schools from provisions of law except such as pertain to physical health, fire safety, sanitation, immunization and physical examinations. The legislative purpose of the Act is clearly stated, that "the state shall not control or interfere with the rights of conscience and religious liberty." The "religious liberty" thus protected by the Act is, of course, the liberty of a particular religious body to observe and practice its religious teachings in their full integrity. Obviously this liberty does not extend to religious practices which pose significant threats to people. But neither is it limited so as to bar religious groups from the observance of practices required by the teachings of their faith and which do not pose such threats. Obviously whole classes of persons and activities in our society are not to be governmentally regulated on the ground that there occur exceptions to good conduct by some within those classes.

ACSI's schools are pervasively religious entities. They would not exist except for their religious mission to children. A critically important area of the religious life of the ACSI school is that of discipline. The ACSI schools, as an absolute requirement of religious faith, must adhere to Biblical principles of discipline. These are founded on love. They include the allowance of corporal punishment. They hence are inherently an aspect of the exercise of religion protected by the 1984 Act. In no way, I should add, is the "physical health" exception provided for in that Act applicable to the ACSI schools in their disciplinary practices. No general health problem whatever has been posed by private schools in Alaska and, in particular, none by religious schools, insofar as discipline is concerned. Should any individual instance of child abuse arise in any public or private school, or elsewhere, legal safeguards relevant thereto already exist for the protection of children.

Hon. Barney Gottstein
May 4, 1989

As to my second point: the proposed regulation would plainly be violative of rights of ACSI's schools protected by the Religion Clauses of the First Amendment to the Constitution of the United States. I have stated above the essential fact that the exercise of discipline within an ACSI school is part of the school's exercise of its religion. That being so, it is familiar law that government may not interfere with the exercise of religion without proof that its interference is justified by a "compelling state interest." Hobbie v. Unemployment Appeals Commission, 480 U.S. 130, 141 (1987). Proof of some mere "public interest" will not suffice. The courts have many times stated that, to interfere with the First Amendment liberties of speech, press or religion, government must prove a supreme societal interest as its justification - indeed one that cannot be realized by any less restrictive means. Wisconsin v. Yoder, 406 U.S. 205 (1972); Callahan v. Woods, 736 F.2d 1269, 1272 (9th Cir. 1984).

Coming now to examine 4 AAC 42.200 in light of those requirements, it is apparent that it would be unconstitutional as applied to non-state-aided religious schools:

1. There is no evidence that any supreme societal interest supports the proposed regulation. I do not express any opinion as to regulating the public schools in the administration of corporal discipline. What is totally clear is that no general threat to the health of children has ever arisen in Alaska resulting from disciplinary practices of Alaska's religious schools.

2. It is clear that AAC 42.200, if adopted, would create excessive governmental entanglements with religious schools in violation of the requirements of the Establishment Clause of the First Amendment. The Supreme Court has many times stated that the church-state separation principle precludes government involvement with religious bodies which involvement produces "a kind of continuing day-to-day relationship which the policy of [religious] neutrality seeks to minimize." Walz v. Tax Commission, 397 U.S. 664, 674 (1970). The Court, in Lemon v. Kurtzman, 403 U.S. 602, 618 (1971), warned of the dangers of "sustained and detailed administrative relationships [between government and religious schools] for enforcement of statutory or administrative standards."

Hon. Barney Gottstein
May 4, 1989

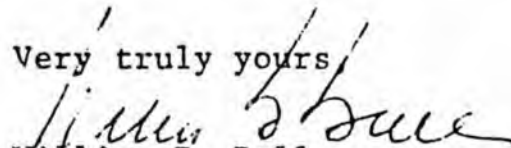
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4 AAC 42.200 calls for the kind of involvements of the State in the affairs of religious schools which is constitutionally forbidden. There is no point to having those schools submit the "policy" unless the State can pass upon the policy and supervise performance under the policy. The clear implication is that the State will review whether the person who "may administer corporal punishment" is a person or class of persons of whom the State approves. Otherwise why ask who the person is to be? As to "type of corporal punishment permitted," "the circumstance under which it is permitted," "requirements governing privacy and the presence of witnesses," it is plainly pointless to require the submission of that information unless the State considers that its function is to approve or disapprove these specific parts of the "policy."

It is further noted that 4 ACC 42.200 states: "Corporal punishment may only be administered in accordance with the policy on file with the department." This means either that the Department must assure that the policy is so administered or it means nothing. If the Department is not going to take steps to correct the school when it deviates from its stated policy, what point is there in requiring the school to submit its policy? It appears obvious that it is the intention of 4 AAC 42.200 to give the Department power to police the schools in the observance of their corporal punishment policies.

Considering that 4 AAC 42.200 calls for intrusion by the State into a central area of the religious administration of religious schools, and that such intrusion is not justifiable under the heading of compelling state interest, it is my considered opinion that, in spite of the undoubted good motivations which may have given rise to its being proposed, it is an unconstitutional measure insofar as it would be made applicable to such schools.

Very truly yours,


William B. Ball

WBB:dh
Enc.

cc: Commissioner Bill Demmert
Mr. Burt Carney
Dr. Paul A. Kienel

WILLIAM BENTLEY BALL

In the private practice of law in the Harrisburg firm of Ball, Skelly, Murren & Connell.

A constitutional lawyer who has been lead counsel in litigations in 22 states and in 19 cases in the Supreme Court of the United States, including the landmark decision in the Amish case, Wisconsin v. Yoder. Life Member, American Law Institute. 1982 Clarence Darrow Award. Member, National Committee, The Human Life Foundation, Inc. Messiah College Distinguished Public Service Award, 1985.

Lectures and debates on constitutional law issues at University of Sydney (Australia), University of Minnesota, University of Chicago, Amherst College, Harvard Graduate School of Education, University of Pennsylvania. Keynote speaker National Conference on Governmental Intervention in Religious Affairs, 1981 (Natl. Council of Churches, Synagogue Council of America, U.S. Catholic Conference).

Member, bars of New York, Pennsylvania, Supreme Court of the United States; U.S. Court of Appeals, 7th Circuit; U.S. Court of Appeals, 3rd Circuit; U.S. Court of Appeals, 5th Circuit; U.S. Court of Appeals, 6th Circuit; U.S. Court of Appeals, 9th Circuit; U.S. Court of Appeals for the District of Columbia.

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WILLIAM BENTLEY BALL

May 26, 1989

Thomas E. Wagner, Esq.
Deputy Attorney General
State of Alaska
P.O. Box K
Juneau, AK 99811

Dear Mr. Wagner:

Before leaving for the Memorial Day weekend, I wanted to get this letter off to you. Thank you for accepting my call. I tried to reach my clients in Alaska this afternoon but without success.

In our conversation, you stated that the State, under 4 AAC 42.200, is seeking only to make a survey of disciplinary policies, and that its request to know who is to administer punishment is not a request for names, but merely whether the "who" is a staff person or the parent. You further stated that the State would not, and legally could not, on the basis of the responses, regulate any particular school.

If the foregoing is the State's firm opinion, then I respectfully suggest that language be added to 4 AAC 42.200 expressly stating that, or, as a less desirable alternative, that the Attorney General issue a concurrent opinion stating that. Then my clients would be able to react. One additional thought about the above suggested amendment. It should specifically provide the confidentiality of all responses.


I do see a significant difference between a regulation which is, and is intended to be, solely a statewide survey of practices and one which is a fishing expedition intended to set up religious schools for intrusive surveillance and enforcement or punitive actions.

Thomas E. Wagner, Esq.
May 26, 1989

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My clients will of course have to follow their conscientious conclusion in their reaction to the proposal as above interpreted by you. They have told me, prior to our talk, that they would risk jail rather than permit the State to make them abandon policies which are religiously required but which are safe and reasonable.

Very truly yours,


William B. Ball

WBB:dh

cc: Mr. Burt Carney
Mr. Mac Culver
Dr. Paul A. Kienel

child study team, the test results would not be a valid estimate of the student's current achievement level. If the student's current individualized education program (IEP) under 4 AAC 52.140 contains recommendations regarding group standardized testing, then those recommendations should be applied, making a special meeting unnecessary.

(c) Bilingual students who are identified in language proficiency categories A or B under 4 AAC 34.050 may be excluded from testing if they have been in U.S. schools for less than three full school years. All students with three or more full school years in U.S. schools must be tested. (Eff. 3/15/89, Register 109)

Authority: AS 14.07.020
AS 14.07.060

CHAPTER 07. STUDENT RIGHTS AND RESPONSIBILITIES

Section 10. Establishment of district guidelines and procedures; prohibited discipline	Section 900. Definition
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4 AAC 07.010. ESTABLISHMENT OF DISTRICT GUIDELINES AND PROCEDURES; PROHIBITED DISCIPLINE. (a) Each school district shall develop and adopt policies regarding student rights and responsibilities. These policies must address both substantive and procedural matters relating to standards of student behavior, treatment, and discipline. A uniform discipline policy must be in effect throughout the district for the purpose of establishing standards and procedures in matters relating to student discipline. The procedures, at a minimum, must address the following:

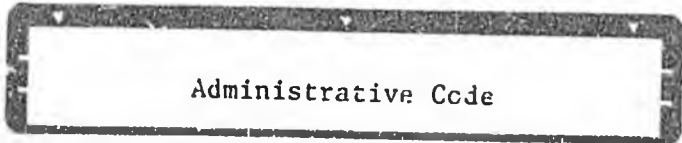
- (1) routine discipline case procedure; and
- (2) chronic or serious discipline case procedure.

(b) All district policies must be consistent with the federal and state constitutions, state statutes and regulations as written or construed by courts of competent jurisdiction.

(c) The use of corporal punishment in Alaska public schools is prohibited. (Eff. 8/30/75, Register 55; am 3/1/78, Register 65; am 8/25/89, Register 111)

Authority: AS 14.07.020(a)
AS 14.07.060

4 AAC 07.900. DEFINITION. As used in this chapter, "corporal punishment" means the application of physical force to the body of a student for disciplinary purposes. It does not include the use of reasonable and necessary physical restraint of a student to protect the stu-



dent, or others, from physical injury, to obtain possession of a weapon or other dangerous object from a student, to maintain reasonable order in the classroom, or on school grounds, or to protect property from serious damage or destruction. (Eff. 8/25/89, Register 111)

Authority: AS 14.07.020(e)
AS 14.07.060

CHAPTER 12. CERTIFICATION OF PROFESSIONAL PERSONNEL

Section	Section
25. Certification for teachers providing special education	41. Certification for related services providers
26. Certification for teachers of gifted children	53. Vocational education personnel qualifications
35. Certification for administrators of special education	60. Endorsements

4 AAC 12.025. CERTIFICATION FOR TEACHERS PROVIDING SPECIAL EDUCATION. (a) A person employed by or on behalf of a school district to teach special education to handicapped children must possess a Type A teacher certificate issued under 4 AAC 12.020 with an endorsement based upon completion of an approved teacher training program in special education.

(b) A person who has the primary responsibility for the evaluation of, the planning of educational programs for, or the teaching of or training of staff to teach children who are visually impaired or deaf must have an endorsement in the education of children with the relevant impairment.

(c) A person employed by or on behalf of a school district to teach special education to preschool handicapped children, who does not hold an endorsement in preschool handicapped education must, in addition to the requirements in (a) of this section, complete 7½ hours of inservice training in early childhood special education before or during the first year of employment in teaching preschool handicapped children. This subsection is repealed July 1, 1993.

(d) Effective July 1, 1993, a person employed by or on behalf of a school district to teach special education to preschool handicapped children, who does not hold an endorsement in preschool handicapped education, must have completed six semester hours in early childhood special education in addition to the requirements in (a) of this section. (Eff. 7/16/89, Register 111)

Authority: AS 14.07.060
AS 14.20.020
AS 14.30.250