

**S B**

**442**

# Senator John B. (Jack) Coghill

Alaska State Legislature

Box V  
Juneau, Alaska 99811  
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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 CAPITOL  
JUNEAU ALASKA 998  
907 465 1800

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.

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

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. 3/15/63, Register 109)

Authority: AS 14.07.020  
AS 14.07.060

## CHAPTER 07. STUDENT RIGHTS AND RESPONSIBILITIES

Section	Section
10. Establishment of district guidelines and procedures; prohibited discipline	900. Definition

### ~~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(a)  
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

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HARRISBURG, PENNSYLVANIA 17108

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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

- 2 -

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

- 3 -

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

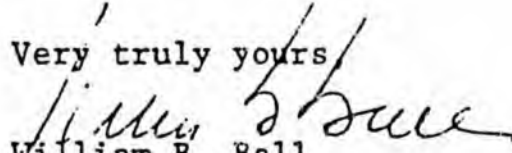
- 4 -

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

- 2 -

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

# MEMORANDUM

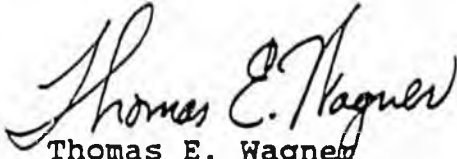
State of Alaska  
Department of Law

TO: Members, State Board of Education DATE: June 3, 1989

FILE NO.: 993-89-0117

TEL. NO.: 465-3603

SUBJECT: Regulations relating to  
corporal punishment in  
schools



FROM: Thomas E. Wagner  
Assistant Attorney General  
Human Services-Juneau

Attached are copies of two letters from William Bentley Ball, one to the board president dated May 4, 1989, and one to me dated May 26, 1989. Representative Randy Phillips requested that our office give the board a written response to Attorney Bentley's position.

I. Corporal punishment as a health and safety issue

In his May 4 letter, Mr. Bentley claims the proposed regulations do not relate to the physical health of students in private schools. He asserts that no general health problem has been posed by discipline practices in private schools.

It is clear that the board's authority to regulate private schools is limited to health and safety issues. The board is empowered by AS 14.07.020(7) to

prescribe by regulation, after consultation with the state fire marshal and the state sanitarian, standards in addition to the requirements of AS 18.15.145 that will assure healthful and safe conditions in the public and private schools of the state including a requirement of physical examinations and immunizations in pre-elementary schools; the standards for private schools may not be more stringent than those for public schools.

(Emphasis added). AS 14.45.100 exempts certain religious or other private schools, those that elect to comply with AS 14.45.100 -- 14.45.130, from

"other provisions of law and regulations relating to education except law and regulations relating to physical health, fire safety, sanitation, immunization, and physical examination."

(Emphasis added). Thus, the board has no current statutory authority to regulate the use of corporal punishment in private schools for pedagogical reasons alone, but may regulate in that area for health and safety reasons.

There was probably insufficient evidence presented at the board's subcommittee hearings on corporal punishment, which I attended, on which to base a conclusion that corporal punishment practices in private schools in Alaska currently constitute a pervasive health problem. Several witnesses, sometimes citing biblical references, testified about corporal punishment being applied with a "rod." Others testified that a paddle was used. There was no testimony that corporal punishment in Alaska schools, public or private, has commonly led to serious physical injuries. Many of the school representatives that testified in favor of permitting corporal punishment said that the practices in their schools were reasonable and not excessive. The board did not get information from all schools, nor about all the practices used, i.e., what instruments were being used, to what extent, and what protections were being observed to guard against abusive incidents.

The board was presented with evidence that spanking or paddling can cause physical injury, ranging from only temporary reddening, welts, or bruises on the buttocks, to hematoma (bleeding deep into the muscles of the buttocks), bruising of the coccyx, fracture of the sacrum, and tearing of the nerves that innervate the pelvic area or, if the paddle hits below the buttocks, on the back of the upper thighs, bruising of the sciatic nerves. Taylor and Maurer, Think Twice: The Medical Effects of Corporal Punishment, at p. 30. There was evidence that paddling of the buttocks sends force waves through the entire length of the spine, and may damage the brain. Id., p. 32. Damage can occur to a boy's genitals by blows to the buttocks if the instrument hits the scrotum or if the penis is rammed against the object the child is leaning on. Id., p. 33. Finally, although no such abusive incident in Alaska was reported to the board, there have been news stories from other states about of children being severely beaten, even beaten to death, in incidents of excessive use of corporal punishment.

There was evidence indicating that childhood incidents of corporal punishment can have long term psychological consequences, from nightmares to post-traumatic stress syndrome, to psychological problems, such as sexual dysfunction later in life. In fact, Taylor and Maurer, at p. 36, argue that beating a child on the buttocks must be recognized as a form of sexual abuse. Although the breadth of the board's statutory authority is not precisely clear from the statutory phrases "healthful and safe conditions" and "physical health", it is by no means certain that the courts would consider the psychological damage described in this paragraph to come within the board's authority. To avoid legal challenges about the scope of the board's authority, we suggest the board limit its regulations to those that can be supported under a rationale of protecting against physical damage caused by physical trauma.

We believe the board's proposed regulations, as they relate to private schools, are related to physical health in two ways. First, by requiring the schools to have a policy in place regarding the use of corporal punishment, school policymakers are required to think about the issue beforehand, and to set parameters for their personnel. Limitation of corporal punishment to striking only certain parts of a student's body, requiring that the student be clothed, permitting only a certain number of blows, requiring that the spanking be done with the open hand, prohibiting the use of certain types of instruments, requiring that the punishment be administered only by the principal or some other person who is not the person calling for the punishment, and requiring the presence of adult witnesses, are all policies a school might consider to reduce the possibility that a child will be injured by excessive punishment given in anger.

Parents seeking a school for their children will be able to evaluate the policies of the different schools. Because even parents who desire to have their children attend schools where corporal punishment is an option will probably want assurances that the school's practices are reasonable, and that precautions have been taken to minimize the risk of serious injury, the requirement that each school have a public policy will help the marketplace work to increase health and safety. Requiring that corporal punishment be limited to that described in the policy will offer parents some assurance against excesses.

The regulations are related to health in a second way. By requiring schools that use corporal punishment to report their policies and extent of and the circumstances surrounding the use of corporal punishment, the board can be made aware of the extent to which various practices are used in Alaska. If the board finds certain common practices which appear to have high risks to the physical health of the students, it can conduct further research into potential medical effects, and adopt further regulations if warranted. Essentially, the board is inquiring into the practices in use in the private schools so that it can carry out its duty to "assure healthful and safe conditions" in those schools. In my telephone conversation with Mr. Ball, I indicated my belief that it was the board's intent at this time only to gather information, and that it would need to take further regulatory action, and justify that action, if it became aware of any particular practices it wished to regulate further. It was not proposing, as Ball assumed in his May 4 letter, to approve or disapprove any particular school's policy.

In our opinion, it is within the scope of the board's statutory authority to require both the existence of a written policy, made available to the parents and the department, at

schools that use corporal punishment, and the reporting of the actual use of corporal punishment. The first requirement uses the market to enhance health and safety while the second is reasonable to enable the board to carry out its statutory duty to develop standards that will assure healthful and safe conditions. As Mr. Ball himself recognized in his May 26 letter, the board's monitoring of practices in private schools with an eye toward future regulations if needed, is less intrusive into the schools' operations, than would be passing, on a case-by-case basis, on the propriety of each school's policy.

## II. The identification of who may administer corporal punishment

Mr. Ball was also concerned that, by requiring the school's policy to include "who may administer corporal punishment," the board sought the name of each person authorized by the school to administer corporal punishment so that it could pass on whether it thought that person was "fit" to do so. I told Mr. Ball I thought the board's intent was to learn the role of the person authorized to administer corporal punishment: would the classroom teacher be authorized to do so, or only the school administrator? In some schools, the parents themselves are called to the school to administer the punishment. If I am correct regarding the board's intent, the proposed regulation should probably be reworded to reflect that intent.

## III. Confidentiality and Enforcement

In his May 4 letter, Mr. Ball suggested that, if the board requires reports of incidents of corporal punishment, it should specifically provide for the confidentiality of responses. Mr. Ball's point is well taken. It could be embarrassing to a student or the student's parents to have an incident of this nature made public. Disclosure that a particular student was subjected to corporal punishment could implicate the child's constitutional right to privacy or the student's rights under the regulations governing the Family Educational Rights and Privacy Act of 1974 ("FERPA"). In some of the smaller schools, the sex and grade of the student may be sufficient information to be able to identify the student involved.

AS 01.25.120(a)(4) permits a state agency to refuse to disclose records required to be kept confidential by a federal law or regulation. Federal regulations adopted under FERPA permit a private school covered by FERPA to release personally identifiable educational records to the state educational agency, provided the state agency takes steps to protect the personally identifiable information and destroys that kind of information when no longer necessary to monitor compliance with federal requirements. 34 C.F.R. 99.31(a)(3)(iii); 34 C.F.R. 99.35. In this case, some

of the private schools being regulated might not be subject to FERPA requirements, because they are not supported by federal education money. Further, the state would not be requesting the records for the purpose of monitoring compliance with federal requirements. Thus it is doubtful that the department can provide for confidentiality under AS 09.25.120(a)(4).

AS 09.25.120(a)(3) provides for confidentiality of "medical and related public health records". Although we have stated above that we believe the issue of corporal punishment is related to health and physical safety, we do not believe the reports required by the proposed regulations would be "medical and related public health records." Accordingly, we see no basis for nondisclosure of the records.

A related concern, not raised by Mr. Ball, is the Department of Education's lack of enforcement tools. If private schools fail to make the required reports, or fail to make the reports in sufficient detail to permit the department to identify practices that may be identified as health risks, it may be cumbersome to enforce the proposed reporting requirements. For the above reasons, the board may wish to reword the proposed reporting regulation by removing the requirement that the grade and sex of each student subjected to corporal punishment be reported. Alternatively, the board may wish not to require reporting of corporal punishment incidents, but instead to rely only on the policies filed with the department to determine whether further regulation is needed.

cc: Hon. Randy Phillips

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 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.

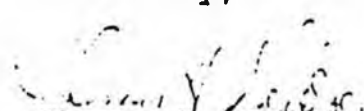
The worst part of this whole saga is that we, in the business community, are expected to hire these dysfunctional graduates. So, over, \$6300/student/year is spent and the product is flawed. What a crying shame!

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

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 Cooper

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

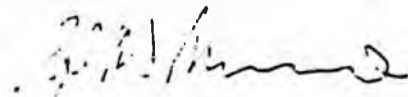
Dear Sir:

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) 466-0862



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 departments 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 departments 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.

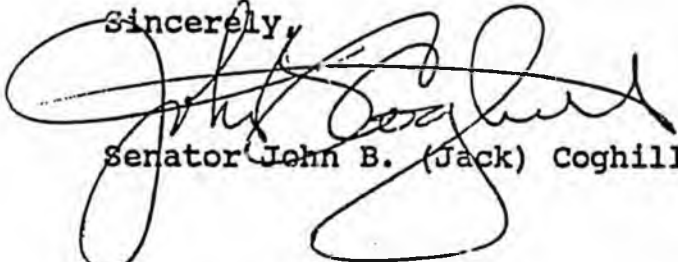
AS 47.17 was enacted in 1971 to specifically address the potential "harm" to children these proposed regulations appear to be concerned with. You will recall that AS 47.17 is our Child Protection Act. This Act more than adequately protects our school aged children from potential physical injury as a 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



White 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.

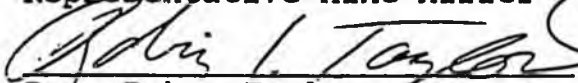
We would like to register our strong objection to the inclusion of private schools in the proposed regulation. In a joint meeting of the House and Senate Health, Education and Social Services Committees, which took place on March 6, 1986, extensive testimony was taken on Senate Bill 282 and House Bill 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.

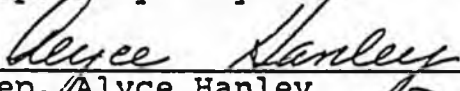
Commissioner Demmert  
March 16, 1988  
Page 2

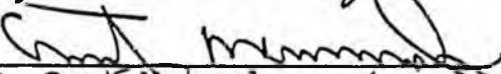
Commissioner, we respectfully request that the Department of Education withdraw the corporal punishment regulations proposed in its memorandum number 88-14 dated February 22, 1988.

Sincerely,

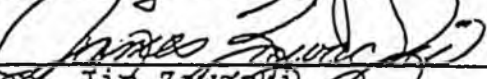
  
Representative Mike Miller


  
Rep. Robyn Taylor

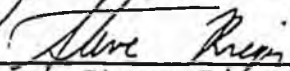
  
Rep. Alyce Hanley

  
Rep. Curt Menard

  
Rep. Fritz Pettyjohn

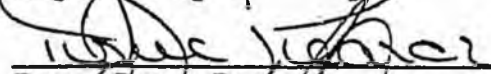
  
Rep. Jim Zawacki

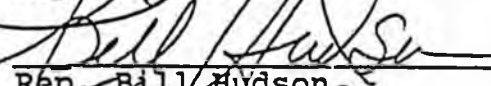
  
Rep. Virginia Collins

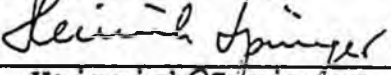
  
Rep. Steve Rieger

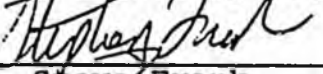
  
Senator Paul Fischer

  
Rep. Randy Phillips

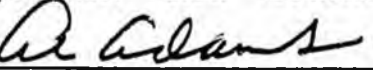
  
Rep. Drue Pearce

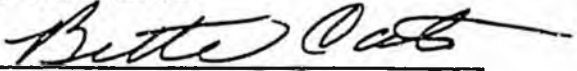
  
Rep. Bill Hudson

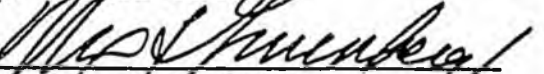
  
Rep. Heinrich Springer

  
Rep. Steve Frank

  
Rep. H.A. "Red" Boucher

  
Rep. Al Adams

  
Rep. Bette Cato

  
Rep. Max Gruenberg