

**SB**

**225**

# Alaska State Legislature

Sen. Lyda Green, Chairman  
Sen. Loren Leman, Vice-Chairman  
Sen. Mike Miller  
Sen. Johnny Ellis  
Sen. Judith Salo



State Capitol  
Room 123  
Juneau, Alaska 99801-1182  
907-165-3762

## Senate Committee on Health, Education and Social Services

SB 225  
Student access to school programs

### SPONSOR STATEMENT

This bill was introduced by request to guarantee the right of access to extracurricular activities by students being educated according to AS 14.30.010(b). Under this measure, these activities would include, drama, debate, music, band, and athletics.

Under Alaska law, city and borough school districts are required to contribute a local match to the education foundation formula. This local match is generally levied through a 4 mill property tax assessment and is paid by families with children being educated in public schools, private schools, correspondence curriculum, and home schools.

Participation in extracurricular activities is an important component of the education of our children. It encourages the development of leadership skills, a healthy spirit of competition, confidence, goal orientation, and the ability to become a team player.

Currently, access to extracurricular activities is impeded in some districts of the state.

These programs that exist to benefit children should be made available to all children. This includes students whose parents choose to educate their children in other than a public schools. Denying access to these programs is discriminatory and contrary to providing equal educational opportunities to all students.



# NEA-ALASKA

*Affiliated with the National Education Association*

## NEA-ALASKA POSITION PAPER SB 225 February 7, 1996

NEA-Alaska and its members are deeply committed to the cause of public education in Alaska. We know that our Alaska constitution has mandated "a system" of public education to serve the needs of Alaska's children, and to help students become informed and responsible citizens and productive members of society.

Because of our commitment, we monitor the Legislature's annual debates about funding for public education and advocate for state educational support that we consider crucial to quality education in Alaska.

Because of our commitment, we support opportunities for families to make choices and select options and educational models which may take into account the diverse needs of Alaska's students, within the context of public education.

And because of our commitment, we recognize the importance of extra-curricular activities in the public schools. We are proud that Alaska's teachers help organize and lead extra-curricular activities, frequently without any financial reward at all, or with only nominal financial compensation.

Our teachers support extra-curricular activities for many reasons. There are obvious benefits to the student participants, who may learn or improve skills, and develop their ability to work cooperatively with others and to compete fairly and successfully in activities of their choice.

There are also benefits to the schools where the activities occur, because activities can raise school morale and school pride, and foster school identity.

Extra-curricular activities also help keep students in school who might otherwise drop out, and success in extra-curricular activities promotes confidence and self-esteem .

Senate Bill 225 pays homage to the quality of extra-curricular programs in the public schools. By implication, Senate Bill 225 declares that these programs are so successful, so popular, so useful, and so important that students attending private or secular schools should have the opportunity to take part in public school extra-curricular programs.

We are not surprised that public school extra-curricular programs are universally well-regarded. But it would be surprising to find private school operators, many of whom have been adamant in saying, as a matter of principle, that they seek no government money, and no involvement with government-run schools, or as little involvement as possible, now endorsing a measure which, if enacted, would be tantamount to providing private schools with a public subsidy.

We have heard private school advocates and operators insist that they seek no subsidy or special privilege, and that they simply want to prove that they can do more with less: to the extent that private school advocates and operators may support Senate Bill 225, the message is different now, because Senate Bill 225 would enable private schools, including sectarian schools, to offer merely an academic education for students, while inviting their pupils to take part in the extra-curricular activities at the public school down the street or across town at public expense.

We do not believe that Senate Bill 225 is constitutional. We do not believe that Senate Bill 225 is fair. We do not believe that Senate Bill 225 is helpful to the Alaska system of public education envisioned by the state constitution.

The bill is not constitutional under the Alaska Supreme Court decision in the "Sheldon Jackson" case, where the Court struck down a law providing tuition equalization to Alaska students at private colleges, to offset the higher cost of private education as compared with the cost of studies at the University of Alaska. If passed, Senate Bill 225 would constitute a subsidy to sectarian schools, aiding them by picking up with public dollars the costs of the extra-curricular programs for their pupils and allowing them to use their resources solely for academic programs. The Alaska Supreme Court noted that to constitute an unconstitutional subsidy of sectarian education, it is not necessary that the government transmit money directly to sectarian schools. Substance is more important than form.

Senate Bill 225 would provide a subsidy for nonpublic schools by the public sector. Should public funds be used to hire the debate teacher and the athletic coach, to buy football uniforms and band instruments, to pay for school maintenance and operations required for children who are already enrolled in religious and other private schools? We think not, especially in the face of our Alaska Constitution's explicit ban upon the expenditure of public funds "for the direct benefit of any religious or other private educational institution," or for sectarian purposes.

Senate Bill 225 is unfair. We can foresee an undermining of school morale and cohesiveness when a youngster who is not a student at the public school is selected to be on an athletic team, or is cast in a school play, or joins a debate team, requiring that another youngster enrolled in the school be passed over.

Indeed, under Senate Bill 225, the opportunities for non-public school students to take part in extra-curricular activities will actually be greater than the opportunity for enrolled public school students.

This inequity will arise in several ways.

First, although the bill would require that a student not attending the public school must "meet all school district eligibility requirements for participation in the activity that are applicable to a student who is in attendance in the school district," the requirement is unworkable, and so is a sham.

An obvious example concerns grades. The public schools of a school district have grading standards developed under district-wide auspices or with district approval and guidance. The grading practices in a private school may be very different. As a result, a requirement that students maintain a 2.5 or 3.0 grade average to take part in an activity becomes compromised if a student can demand the right to take part using a grade average obtained in another system, where grades may be inflated relative to public school grades.

Another example of the unworkability of this bill lies in the fact that private and religious schools need not

maintain permanent student records reflecting immunizations, physical examinations, standardized testing, academic achievement, and courses taken at school. Under these circumstances, how will a public school district determine in fact that an applicant for an extra-curricular activity does meet "all school district eligibility requirements for participation"? This bill, therefore, will impose significant administrative costs on school districts and propel public school administrators into conflict with unenrolled students and their families, and with private schools. In some instances, the conflict will result in expensive litigation, as conscientious public school administrators try, in the absence of reliable data, to determine on a case-by-case basis who qualifies and who does not.

Moreover, Senate Bill 225 opens the possibility that a student who is declared to be ineligible as a public school student could demand eligibility simply by leaving the public school system and obtaining an "academic education" in another, perhaps less demanding, environment.

Under Senate Bill 225, the student who does not enroll in public school may have another advantage: he or she could demand the right to take part in an extra-curricular activity at a school of his or her choice, while another student, enrolled in the public schools, is limited to participation at the school for that student's local attendance area.

Senate Bill 225 would be detrimental to public education. First, at the very time when public schools are being asked to do more with less, Senate Bill 225 would require them to expand extra-curricular activities to a new

group, consisting of boys and girls who opted out of the public school system for all other purposes.

What will be the practical result? As noted, it will mean diminished extra-curricular activities for students enrolled in the public schools. It must also accelerate the noticeable trend we already see, through which public school districts are curtailing or eliminating important extra-curricular offerings because of budgetary constraints.

In that regard, we note that the supporters of the bill are not offering increased state assistance to public school districts, to help the districts pick up additional costs that will be incurred if more students are to be served in extra-curricular programs. The only inference that can be drawn is that the supporters of the bill do not expect public schools to serve more children in extra-curricular activity programs - - just different children than are being served at present -- or that the supporters of the bill expect hard-pressed school districts to find more money for extra-curricular activity programs from the academic or other offerings being provided to public school students.

Finally, this bill as written is very confusing. In section 1, on page 1, the bill states that a "student" wanting to participate in extra-curricular activities must be "receiving academic education as permitted under AS 14.30.010(b)."

A review of AS 14.30.010(b) reveals that this part of Title 14 refers to a large group of young people. It refers to private school students; to students being tutored; to students at religious or other private schools, to students attending a school operated by the federal government; to students having a physical or mental condition that makes attendance impractical; to students in the custody of a court or law enforcement authorities; to students who are "temporarily ill or injured"; to students who have been

suspended or denied admittance to the public school; to students who live more than two miles from a public school or a transportation route; to students in correspondence study, to students who have completed the 12th grade; and to students excused from enrollment by action of the school board of the district or by the school superintendent with the board's approval.

So is it the intent of the sponsors that a public school district which has expelled a student, who then enrolls in a private school or in a correspondence program, must accept that student back into an extra-curricular program? Or that a public school athletic team, after dropping a player for academic ineligibility or other valid reasons, must accept the player back on the team when he offers correspondence study as his "academic program," or grades from a private school that uses lower grading criteria? Is it the intent that a teen-ager in custody of the Department of Corrections could assert a right to take part in extra-curricular activities of a public school? Or that a student who is "temporarily ill," and contagious, becomes entitled to take part in extra-curricular activities? Or that the public school district bear the transportation costs to bring a youngster from his house, or his private school, to the public school for an extra-curricular activity?

These are just more examples of the confusion we believe will be engendered by Senate Bill 225. We also see a potential or temptation for disparate and corrupt practices. An out-of-school star athlete could be recruited by a public school and the so-called, amorphous, vague, and non-standardized "eligibility requirements" could be stretched to make sure that the athlete is suited up, while an equally worthy young person were not invited to play.

We anticipate that it will be argued that we are indifferent to the needs of young people who are not in public school, and that these youngsters and their families make smaller financial demands upon the public sector than do public school enrollees and their families. It may even be contended that opponents of this bill want to punish those who choose to get their educations apart from the public school system in Alaska.

We are not indifferent. We would welcome these students into the public schools as regular attendees. We have always encouraged more diverse school programs that would help meet their needs, wherever greater diversity is enriching, constitutional, and financially feasible. But we believe that having elected not to take up either the opportunities or the challenges of the public schools, one cannot fairly expect to be able to participate in extra-curricular opportunities also desired by public school students and which build in-school friendships, enhance school spirit and morale, and promote an atmosphere of cooperation and teamwork in the school facility. These important purposes would be diluted if Senate Bill 225 were to become law.

Moreover, the supporters of Senate Bill 225, we believe, respectfully, misperceive an important element in a good extra-curricular program. That element is the interplay between the teacher or coach of the extra-curricular program and the student's academic instructors. Through interaction of the academic and extra-curricular, the student is approached as a whole person and the student's needs, problems, talents, and goals are better understood. That kind of interaction within a school faculty is dramatized well in the film, "Mr. Holland's Opus", which shows how extra-curricular activities, reinforcing the academic program and treating a student as a whole person within a school facility, can draw out the best in

America's youngsters.

Therefore, at least as a generally applicable truth, much can be lost when a student gets academic training in one institution and extra-curricular activity in another. While there are exceptional cases, of course, the drama teacher, the band leader, the sports coach, and the computer club counselor, can do the most for a student when working as part of a team with the student's academic teachers. Alaska's private school students deserve nothing less than that .

For all these reasons, we urge the rejection of Senate Bill 225.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

February 9, 1996

**SUBJECT:** Participation in extracurricular public school programs by private school students - (SB 225)

**TO:** Senator Lyda Green  
Attn: Mike Tibbles

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

You have asked if SB 225, which allows nonpublic school students to participate in public school extracurricular activities violates Article VII, section 1, of the state constitution. As explained in this memo, we do not believe SB 225 violates the state constitution. Article VII, section 1, of the state constitution provides in part:

No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

An examination of the minutes of the Alaska constitutional convention reveal that this section was intended to provide support for a strong system of public schools. However, in considering the language to be included in this section, the delegates expressly rejected a provision that would have prohibited "direct or indirect benefits" to religious or other private schools. 2 Proceedings of the Alaska Constitutional Convention 1528. In Sheldon Jackson College v. State, 599 P.2d 127 (Alaska 1979), the Alaska Supreme Court commented on the fact that indirect benefits were not prohibited and stated "the delegates to Alaska's Constitutional Convention made it abundantly clear that they did not wish to prevent the state from providing for the health and welfare of private school students, or from focusing on the special needs of individual residents." Sheldon Jackson at 129.

The court in Sheldon Jackson also set out three criteria for determining when aid to private schools violates the Alaska Constitution. First, the constitution requires the aid be distributed in a neutral manner. For example, state aid in the form of police or fire protection may benefit private schools, but it is distributed without regard to the status or affiliation of the school. Second, and central to the determination of constitutionality, is the nature of the use to which the public funds are to be put. It is direct benefits for education outside of the public school system that is prohibited by the constitution. Third, in determining whether

Senator Lyda Green

February 9, 1996

Page 2

there is a direct benefit, the court looks at the magnitude of the benefit conferred. Substantial indirect benefits may constitute a violation, whereas a direct but trivial benefit may not.

Applying these criteria to SB 225, it is our opinion that the legislation does not violate Article VII, section 1, of the Alaska Constitution. First, the statutory benefits of the bill are applied in a neutral manner. Essentially all students, whether public or private, may participate in public school extracurricular activities, assuming the student meets eligibility requirements. Second, and most importantly, the nature of the benefits provided under SB 225 relate to extracurricular activities and not to classroom educational benefits. While it could be argued that the provision of extracurricular benefits will free private schools to concentrate funds on their private educational services, this is not the type of benefit that is prohibited by the Alaska Constitution. Sheldon Jackson at 130. Finally, the magnitude of the educational benefit conferred under SB 225 does not seem to rise to the level of a constitutional violation. Again, because we are talking about extracurricular activities it does not appear that the benefits conferred on private schools is the type of direct assistance that would violate the Alaska Constitution.

In conclusion, we believe that SB 225 constitutes the type of indirect benefits that may be conferred on private schools without violating Article VII, section 1, of the Alaska Constitution. If you have further questions please contact me.

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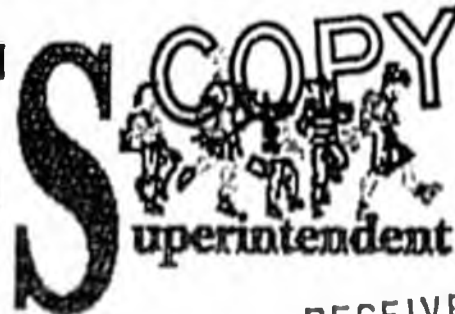
96-090.klb

**MATANUSKA-SUSITNA BOROUGH  
SCHOOL DISTRICT**

Norm Palensko, Superintendent

125 W. Evergreen, Palmer, AK 99645

Phone (907) 746-9255 Fax: 745-0194



RECEIVED  
FEB 16 1996  
Ans'd.....

February 12, 1996

The Honorable Lyda Green  
Senator  
Room 423 State Capitol  
Juneau, AK 99801-1182

Dear Senator Green:

It's my understanding that Senate Bill #225 was introduced on January 18, 1996. It requires school districts to permit students who reside within the district, but who attend private schools, to participate fully in all extra-curricular activities offered by the district, so long as the student is otherwise qualified to participate.

The bill raises interesting constitutional questions regarding the possibility of indirect State aid to sectarian schools. It also raises policy questions concerning the requirement that a district incur the per student costs associated with extra-curricular activities without receiving foundation funding or other financial assistance in respect of a student who is not within the district's student population census.

The timeliness of this bill is extremely questionable when during those times of inadequate funding and corresponding cuts to extra-curricular activities, the legislature is considering expanding the obligations of school districts. This bill has all the earmarks of an additional unfunded mandate with little recognition of the financial realities many districts are facing; particularly in the urban areas that would bear the burden of this bill if it were to pass.

Perhaps the legislature could reconsider Senate Bill #225 in respect to the concerns expressed above. Thank you for this opportunity to respond about the concerns regarding this bill.

Sincerely,

Norm Palensko  
Superintendent

lc

C: Representative Kohring  
Representative Ogan  
Representative Masch  
Senator Hallford

# COPY

From: Timothy Andrew  
1515 Nelchina St #1  
Anchorage, AK 99501  
274-0967 (voice) 563-4854 (fax)

Dear Legislator,

I am writing in regard to SB225 which, in its present form, would put an unfair additional financial burden on the public school districts of this state

I believe in citizens' choice to enroll their children in public or private schooling. In choosing a program or school system, the parent should be aware of that specific program's offerings in terms of curricula, discipline, and extra-curricular activities. If parents of children at a private school wish their children to have the opportunity to participate in extra-curricular activities, then they should work with the private school administration to reprioritize existing programs (and their related expenses) and/or seek additional revenue sources to provide the desired programs. This, as you know, is the same method by which public school districts determine offerings to their students.

I understand the argument that since parents of students, public or private, pay taxes, that private school students should receive some benefit from those contributions. But while they may pay the same total amount in taxes as someone whose child goes to public school, that doesn't mean that those monies necessarily go toward public education. Do local school districts receive funding based on a total number of students (public or private) in their service area? Or do they receive funds only for those enrolled in the public schools in their district? In short, public school districts cannot be expected to provide services to students for which they receive no funding.

Here are some suggestions to address the problems of fund allocations:

A formula could be developed to calculate a fair activity fee (though higher when compared to public school students since activities fees are used to supplement funding, not totally fund activities) for those participants not enrolled in the public school system.

The public school funding formula could be rewritten to include funding for participation in activities by all students within a school district's service area (Provided, of course this didn't equate to subsidy of private education).

In conclusion, while I see the benefits for privately-educated students' participation in certain programs offered by the public school system, we need to make certain that the already overburdened public school system receives appropriate funding specifically for this population segment's participation in public school programs and activities.

Thank you for your time and consideration of this important issue.

COPY

F A X



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To: Lyda Green

Company:

Fax number: +1 (907) 4653805

Business phone:

From: Martha L. Androw

Fax number: +1 (907) 563-8006

Business phone:

Home phone:

Date & Time: 3/5/96 8:55:24 PM

Pages: 2

Re: Senato Bill 225, Private/Home School Students' Participation in Public

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RECEIVED

FEB 17 1996

Ans'd.....

## Petersburg City Schools

Phone 907.772.4271  
FAX 907.772.4719

P. O. Box 289  
Petersburg, Alaska 99833-0289

Mary A. Francis, Ph.D.  
Superintendent

February 15, 1996

The Honorable Lyda Green  
The Alaska Senate  
Chair, HESS Committee  
Room 423  
Juneau, Alaska 99801-1182

Dear Senator Green:

I have been informed that Sharylee Zachary, a parent who homeschools two of her children, participated in a teleconference regarding SB 225 recently and testified that she was not allowed to read curriculum and reference materials in the Petersburg School District library. Upon learning of this testimony, I researched the matter and thought you might be interested in my findings.

In May of last year, Ms. Zachary asked to check out some videos and filmstrips from our elementary library. Since we have a rather small amount of these instructional support materials, staff are reluctant to have them out of our building, in the event a classroom teacher or an enrolled student needs them. It was suggested to Ms. Zachary that she consider checking at the public library for materials she would like to use.

Last fall, the Zachary's enrolled one of their children in our school. Ms. Zachary is frequently in her child's classroom, in the library, in the lunchroom, etc. She often brings her two homeschooled children along. They are welcomed as we welcome all parents to be involved in our school program. Given the access the family has to our school, I was surprised to learn of the testimony mentioned above.

I hope this gives you a clearer picture of home/school relations in Petersburg. We work very hard to assist all parents with the schooling of their children, though our first responsibility is to those enrolled in our schools. Thank you for the opportunity to clarify this matter.

Sincerely,



Mary Annestad Francis, Ph.D.  
Superintendent

cc: Senator Robin Taylor

COPY

RECEIVED

TO: MS. LYTA GREENE  
FAX: 465-3805

DATE: 2/2/96 FEB 02 1996

Ans'd.....

FROM: TIMOTHY AND JANETTE DAVIS

RE: SB 225, ACCESS OF NON-PUBLIC SCHOOL CHILDREN TO PUBLIC SCHOOL  
EXTRA-CURRICULAR SCHOOL PROGRAMS

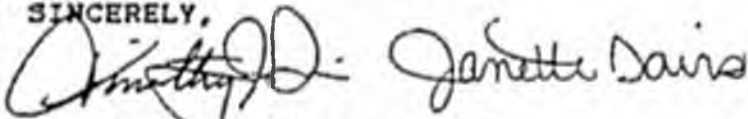
DEAR MS. GREENE,

THE PUBLIC SCHOOL MACHINE IS FUNDED BY ALL TAX-PAYING CITIZENS OF THE COMMUNITIES IN WHICH IT OPERATES. IT WOULD NOT OPERATE WITHOUT THE FUNDING PROVIDED BY PRIVATE CITIZENS THROUGH TAXATION.

THIS TAXATION OCCURS WITHOUT REGARD TO USE OF THE PUBLIC SCHOOL. ALL PAY WHETHER OR NOT THEIR CHILDREN ARE ENROLLED IN PUBLIC EDUCATION. THEREFORE IT IS UNCONSCIONABLE AND DISCRIMINATORY TO DENY ACCESS FOR ALL CHILDREN OF OUR COMMUNITY TO WHAT THEIR PARENTS MORE THAN ADEQUATELY PAY FOR.

IF YOU ARE A FAIR LEGISLATOR (AND WE BELIEVE YOU TO BE), EAGER TO PROTECT CIVIL RIGHTS BY GIVING EACH CHILD OF OUR STATE AN EQUAL OPPORTUNITY TO DEVELOP AND EXPRESS THEIR ABILITIES IN CITIZEN-FUNDED PROGRAMS, AND TO STAND AGAINST ESTABLISHING A SEGREGATED CLASS OF CHILDREN RECEIVING SPECIAL TREATMENT BASED UPON ACADEMIC AFFILIATION, WE URGE YOU TO SUPPORT SB 225.

SINCERELY,



TIMOTHY AND JANETTE DAVIS

RECEIVED

FEB 02 1996

APR 2 1996

Dear Lyta Green,

I am writing to you today concerning SB 225. I am very much for the passage of this bill which permits access of non-public school children to public school extra curricular school programs. Those of us that have chosen to homeschool our children or who have placed our children in private schools also pay taxes and would like the option at times for our children to be able to be involved in extra curricular activities. Thank you for your concern.

Mrs. Gregory R. Stokes  
907-345-0663  
13730 Capstan Dr.  
Anchorage, AK  
99516

Dennis & Debbie Maloney  
3040 Widgeon Lane  
Anchorage, Ak 99508

907-276-3213

I Support

SB 225 ~

all children  
have equal  
rights to access  
to public school  
facilities & extra  
curr. activities

RECFIVED  
FEB 02 1996

Ans'd.....

2/2/96

To: Sen. Lyda Gruene

This letter is in support  
of SB 225. I firmly support  
access of extracurricular school  
programs by students not  
attending public schools.

Sincerely,  
Christine Ireland  
12350 Lilac Dr.  
Anch, Ak.  
99516

STATE OF ALASKA  
THE LEGISLATURE  
LEGISLATIVE AFFAIRS AGENCY  
DIVISION OF PUBLIC SERVICES

RECEIVED  
FEB 15 1996  
Ans'd.....

PETERSBURG LEGISLATIVE INFORMATION OFFICE

PHONE: 772-3741 FAX: 772-3779

FAX TRANSMISSION

TO: HESS  
FAX #: 465-3805  
DATE: 2-15-96

MESSAGE:

2 pages  
From Dana Thynes, Petersburg  
Re: SB 225

**From:**

**Dana Thynes  
Box 2047  
Petersburg, Ak. 99833  
1-907-772-3899**

**To: The Members of the HES Senate Committee February 15, 1996**

**Re: S.B. 225**

**Dear Senators,**

**I teach my children at home, and am very interested in seeing changes in current government education policy and philosophy.**

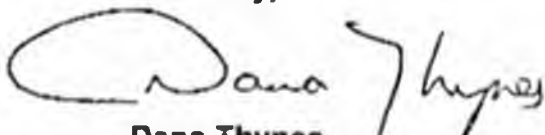
**Many might feel that because I and others have chosen at this time not to use what we consider to be an ailing system, that we should have no voice in that system. But the system belongs to me and all Alaskans, and it is right and fair that we, all the people of Alaska, have the primary voice in shaping school policy (not lobbyists from far away).**

**I was pleased to hear the recommendations of Commissioner Holloway. I, too, formerly lived in Washington state, and knew homeschoolers active in academic and extracurricular classes in their local schools. Indeed, my local school district, Lake Washington, hired a go-between to facilitate relations between the district and its homeschoolers, and in other ways bent over backwards to accomodate homeschoolers. This approach reaps gratitude and builds a sense of community -- and it is smart, progressive thinking. (I am faxing a copy of a letter I received a couple years ago from Bud Scarr, then superintendent of Lake Washington School District. It will follow this page.)**

**My dream is that someday our public institutions will be resource centers for all, not just for a select group; and that all citizens, old and young, will be able to make use of them freely just as public libraries are now used. (Incidentally, public libraries, with their voluntary access philosophy, have little or no violence, vandalism, gang- or drug-related problems.)**

**I ask you to support and promote this bill -- I believe it is the wave of the future.**

**Sincerely,**

  
**Dana Thynes**



Lake Washington School District No. 414

P.O. BOX 2909  
KIRKLAND, WASHINGTON 98083  
(206) 828-3257

DR. L.E. SCARR  
Superintendent

DR. RONALD G. BARNES  
Deputy Superintendent

BOARD OF DIRECTORS

Douglas B. Eglington, President  
Catherine E. Bock  
Clare J. Cochran  
Robert V. Hughes  
Johanna D. Palmer

August 30, 1994

Dear Home Schooling parent:

I believe it's very important for Lake Washington School District to have a positive relationship with our home schooling parents and students. To maintain this partnership, we need to continually review how the district can help home schooling parents.

To get your ideas on how we can better serve you and your children, I would like to meet with you at 7:30 p.m., Tuesday, September 13 in the Board Room of the Administration Center. The address is 10903 NE 53rd Street in Kirkland.

Along with gathering your suggestions and answering any questions you might have, I would like to share with you a new resource guide we are preparing. The guide, which is being created with the help of home schooling parents, will help explain the district's relationship with home schooling parents and the services we can provide.

I hope you will be able to attend this meeting. If not, and you would still like to offer your ideas on the district's role in home schooling, please feel free to express your views to me in a letter.

I look forward to meeting with you.

Sincerely,

A handwritten signature in cursive script that reads "L.E. Scarr".

L.E. Scarr  
Superintendent

DALE E. KASTING, D.M.D.

FAMILY DENTISTRY

7926 OLD SEWARD HWY., SUITE B-7  
ANCHORAGE, AK 99518  
TELEPHONE (907) 349-8588

RECEIVED  
FEB 06 1996

Ans'd.....



2-1-96

Dear Senator Lyta Green,

I would like to voice my strong support for Senate Bill 225, which would allow access to extracurricular school programs to students not attending public school.

I believe it is extremely unfair that this is even an issue. If our household is taxed for public schools, our children should have access to public school programs and activities that homeschool or private school cannot provide. If we were not taxed for the schools, we should have to pay for services or not receive the benefits. These are our facilities too!

Thank you for your consideration.

Sincerely yours,

Susan Kasting

Dale Kasting

Dale and Susan Kasting

6001 E 142<sup>nd</sup> Ave.

Anch., AK 99516

**Statewide Non-Public School estimated enrollment:**

<b>Statewide</b>	<b>4,186</b>
Anchorage	1,552
Fairbanks	1,242
Mat-su	502
Juneau	155
Kenai Pen.	203



## Grace Christian Schools

Elementary Junior High High School

12407 Pintail Street

Anchorage, Alaska 99516

Phone 907-345-4814

FAX 907-345-4241

**Don Stump**  
Administrator

**Karen Beyers**  
Elementary Principal

February 5, 1996

Dear Senator Green,

The school board and administration of Grace Christian School are very much in support of allowing students in private schools the opportunity of participating in extracurricular activities in the public schools, if those activities are not offered in the private school they attend. Grace Christian School offers a strong academic program, but only a limited extracurricular program, mostly because of the financial consideration. The school is financed only through tuition and donations. No state or federal funding is received and, therefore, GCS cannot offer all the extracurricular programs in which students are interested.

Parents who are paying for private education are also paying taxes which support the public school. It only seems right that if they are helping finance the programs, their children should be allowed to participate.

The bottom line is that we want what is best for all students, which we hope is the same philosophy of the public schools. Everything should be done to assure that all students be allowed to have a complete, well rounded education. We would strongly support allowing private school children the opportunity to participate in all extracurricular activities of the public schools.

Sincerely,

Don Stump  
Administrator

Sec. 14.30.010

WHEN ATTENDANCE COMPULSORY.

(a) Every child between seven and 16 years of age shall attend school at the public school in the district in which the child resides during each school term. Every parent, guardian or other person having the responsibility for or control of a child between seven and 16 years of age shall maintain the child in attendance at a public school in the district in which the child resides during the entire school term, except as provided in (b) of this section.

(b) This section does not apply if a child

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

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

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

(C) attendance at an educational program operated in compliance with AS 14.45.100 - 14.45.200 by a religious or other private school;

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

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

(4) is in the custody of a court or law enforcement authorities;

(5) is temporarily ill or injured;

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

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

(8) is excused by action of the school board of the district at a regular meeting or by the district superintendent subject to approval by the school board of the district at the next regular meeting;

(9) has completed the 12th grade;

(10) is enrolled in

(A) the state boarding school established under AS 14.16; or

(B) a full-time program of correspondence study approved by the department; in those school districts providing an approved correspondence study program, a student may be enrolled either in the district correspondence program or in the centralized correspondence study program;

(11) is equally well-served by an educational experience approved by the school board as serving the child's educational interests despite an absence from school, the request for excuse is made in writing by the child's parents or guardian, and approved by the principal or administrator of the school that the child attends.

RECEIVED

FEB 01 1996

Ans'd.....



*Lawrence A. Wiget*

Lawrence A. Wiget, Ed.D.  
Director, Government Relations/Legislative Liaison  
Anchorage School District  
4600 Debarr Road  
Anchorage, Alaska 99519-6614  
(W) 907 269-2255 (FAX) 907 269-2107

TO: SENATOR GREEN  
C/O MIKE TIBBLES

SUBJECT: ASD POSITION PAPER: HB 156/ SB 225

DATE: FEBRUARY 2, 1996

Per your request, attached please find the ASD position statement relative to HB 156. It should serve to answer your questions regarding our position on SB 225 as well.

Thank you!



## Anchorage School District

4600 DeBarr Road  
P.O. Box 196614  
Anchorage, Alaska 99519-6614  
Phone: (907) 333-9561

### SCHOOL BOARD

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### SUPERINTENDENT

Boo Christal

February 23, 1995

Honorable Members  
House HESS Committee  
State Capitol  
Juneau, Alaska 99501-1182

RE: HB 156 (Relating to Access to Extra-curricular Programs By Home School Students)

Dear HESS Committee Members:

The Anchorage School District administration ("ASD") has reviewed HB 156 which, if enacted, would require the ASD to permit students not enrolled in the ASD to participate in ASD sponsored extracurricular activities. We strongly oppose this bill.

Over the past two years, the issue of admitting non-enrolled students to public school extracurricular programs has received much attention in Alaska. In 1993 and 1994, the Alaska Department of Education ("DOE") promulgated regulations which would have required local districts to permit home, correspondence, and other private school students to participate in public school extracurricular activities, including activities sanctioned by the Alaska School Activities Association ("ASAA"). Local school boards and the ASAA voiced strong opposition based on substantial legal, financial, administrative and policy implications of the proposed regulations. As a result, State Board of Education tabled the regulations.

During this same period, the ASD, DOE and ASAA were sued by a handful of home, correspondence and private school students who sought participation by non-enrolled students in ASD's extracurricular activities, particularly ASAA sanctioned interscholastic athletic programs.<sup>1</sup> The superior court rejected the

---

<sup>1</sup> Landra I. Blomfield et al. v. Anchorage School District, Alaska School Activities Association, Inc. and State Board of Education, JAN-93-2740 Civ (Super Ct. Third Judicial District, decided August 2, 1994).

Honorable Members  
House HESS Committee  
February 23, 1995  
Page 2

plaintiffs' claims, holding that the ASD had legitimate financial and administrative reasons for excluding non-enrolled students from participation in ASD sponsored extracurricular activities. The court expressly noted that under the state public school foundation program, only students enrolled in a public school district generate state/local funding for the district. The court said:

[I]t is undisputed that ASD's state funding is provided on a per-pupil basis. If students not enrolled in the District participate in athletic programs there, they effectively draw down the state/local funding without contributing to the "body count" which generates that funding.

Memorandum of Decision and Order Granting Defendants and Denying Plaintiffs' Motions for Summary Judgment at 5. (Copy attached hereto as Attachment 2).

House Bill 156 imposes the identical financial burden and resulting inequities involved in the Blomfield litigation. If enacted, it would create a costly obligation for the ASD, without the funding necessary to carry out the mandate.

In addition, HB 156 ignores long standing and well established principles of local control. Central to the Blomfield litigation were the interests of the ASD in setting and enforcing uniform eligibility standards in athletic programs, and the maintenance of a proper perspective towards extracurricular activities as being subordinate to the academic mission of the ASD. Permitting only students enrolled in the ASD to participate in ASD sponsored extracurricular activities best serves these legitimate interests. We therefore urge House HESS to not support HB 156.

HB 156, as proposed, raises additional concerns.

(a). Recruiting and School "Shopping": HB 156 appears to permit home school students to "shop" between school districts as well as between schools

Honorable Members  
House HESS Committee  
February 23, 1995  
Page 3

within the same district for a team to play on. The proposed language does not appear to limit a home school student to activity participation in the home school student's attendance area. Under HB 156, a home school student living in Wasilla (Mat-Su School District attendance area), for example, could play on a football team in the Anchorage School District. The statute, as proposed, would even permit a student to play on teams in more than one school district, e.g. hockey in the Mat-Su School District and football in the ASD. In addition to "shopping" by students, the proposed statute would also encourage "recruiting" of student athletes by individual schools or school districts. Such a result is undesirable and would undermine long standing policies prohibiting recruitment of athletes and team shopping.

(b). Ambiguity as to the Activities Covered by the Statute: HB 156 defines "extracurricular activities" to include "drama, debate, music, band, and athletic activities." (Emphasis added). Under Alaska statutory rules of construction, the definition is not limited to the listed activities. AS 01.10.040 (b). Thus, it appears that activities such as yearbook, cheerleading, drill team, student council, dances, clubs, spelling bees and field trips, to mention a few, are included under the statute.

A major problem is that the statutory definition also appears to include academic activities. The ASD does not consider "band" and "music" to be extracurricular. They are academic classes which are offered during the regular school day for which students receive credits towards graduation. It is unclear whether HB 156 would require a school district to permit home school students to participate in academic band and music classes. If such participation is required, the ASD can only speculate as to what other academic classes are included within the meaning of "extracurricular activities" under HB 156. For example, the ASD has received numerous requests by home school parents to permit their students to participate in ASD's foreign language classes. Like band and music, foreign language classes are academic subjects. The statute's

Honorable Members  
House HESS Committee  
February 23, 1995  
Page 4

definition of "extracurricular activities" will result in much confusion over what is or isn't an "extracurricular activity" and will encourage litigation over the matter.

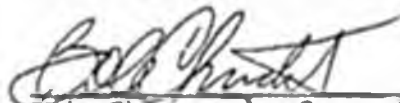
In summary, enactment of HB 156 will result in opportunities for home school students at the expense of ASD students. It will impose unjustified financial and administrative burdens on the ASD, and seriously undermine the ASD's ability to set standards for its extracurricular programs and operate the programs in a cost effective manner. In addition, enactment of HB 156 will serve to provoke costly litigation by persons challenging the constitutionality of the Act, as well as by persons (e.g., other private school students) who wish to be included in the Act. The statute's ambiguous language will also invite litigation. For the reasons outlined, we urge the House HESS committee to decline to support HB 156.

A detailed analysis of the problems we perceive under HB 156 is attached to this letter. See Attachment 1.

Thank you in advance for your thoughtful consideration of the ASD's concerns expressed in this letter. Please do not hesitate to contact myself or Larry Wigot, Director of Government Relations, for additional information or clarification regarding these concerns. My phone number is 269-2290 and Larry Wigot's number is 269-2255.

Very truly yours,

ANCHORAGE SCHOOL DISTRICT



Bob Christal, Superintendent

Attachments (2)

cc: Larry Wigot  
Bill Mell

## Attachment 1

ANCHORAGE SCHOOL DISTRICT'S ANALYSIS OF HB 156

1. Economic Burdens: Under the Alaska Public School Foundation Program ("PSFP"), the ASD and other local districts receive no categorical funding for extracurricular activities, per se. AS 14.17 et. seq. Funds for such activities must be budgeted from basic education funds allocated under the PSFP.<sup>2</sup> Funding for basic education is based on a formula which counts only students who are enrolled in the local public school district. AS 14.17.041. Simply put, students who are not enrolled in the ASD do not generate PSFP revenues which pay for the extracurricular activities offered by the ASD. If HB 156 were enacted, potentially hundreds of home school students residing in the Anchorage attendance area would participate in ASD activities as "free riders," thereby imposing a significant financial burden on the ASD's activities' budget.<sup>3</sup>

In addition, it is a near certainty that the ASD would lose some currently enrolled students if HB 156 were enacted into law, since there are a number of students who remain enrolled in public schools solely because of extracurricular activities. In the Blomfield litigation, for example, two of the named plaintiffs admitted that but for the activity eligibility rules, they would not remain enrolled in the ASD, but would only participate in the ASD's athletic activities, while getting their academics elsewhere. The loss of students would further erode the ASD's funding base.

In this period of declining revenues and severe budgetary cutbacks, enactment of HB 156 would force the ASD to make further reductions or eliminate some extracurricular activities altogether.<sup>4</sup>

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<sup>2</sup> The PSFP formula allocates both state and municipal (local contribution) funds to local municipal school districts. AS 14.17.025.

<sup>3</sup> There are approximately 2,000 students residing within the ASD boundaries who are not enrolled in the ASD. Over 500 of these students are enrolled in home schools.

<sup>4</sup> In addition to expenses for coaches, equipment, uniforms, rental fees and transportation costs associated with extracurricular activities, the ASD pays an ASAA membership fee and a surcharge for each student. Catastrophic liability insurance for non-enrolled students is an additional cost.

2. Fairness Considerations: With respect to interscholastic competitive activities, there are a limited number of positions on any given team. Participation by non-enrolled students would not increase available opportunities, but would simply result in the "bumping" or displacing of ASD students from their ASD interscholastic school team. Such a result raises issues of fundamental fairness. Students who attend the ASD and participate in its academic program should not be bumped from their school team in favor of a student who has made a choice to attend school elsewhere, even if the non-enrolled student is a superior athlete. ASD students generate the foundation funds from which the ASD funds its interscholastic activities. Home school students who, under HB 156, would drop by after school only to play sports would contribute nothing to the "body count" from which PSFP funds are calculated.

Furthermore, an important goal of our extracurricular programs is to foster school pride and school spirit. Each team represents a particular school as well as the ASD as a whole. It goes without saying that our teams should be composed of students who are enrolled in the ASD.

It should also be pointed out that home school students have opportunities to participate in extracurricular activities through private or public sports leagues in Anchorage. They are also permitted to join ASAA and compete individually in ASAA sanctioned competitions. Further, it is our understanding that ASAA rules allow a group of unrelated home school students to form a team. With over 500 home school students in Anchorage, it would be feasible for a number of these students and their parents to get together to form a sports team. In the alternative, home school students have the option of enrolling in the ASD, and when enrolled, may participate in ASD sponsored extracurricular activities. As the Blomfield court observed, "it is through their own choosing that they absent themselves from the realm of public education."

Fundamental fairness clearly militates against enactment of HB 156.

3. Administrative Concerns: The ASD considers participation in extracurricular activities to be a privilege which, at all times, is subordinate to the ASD's academic and educational mission. To participate in extracurricular activities, students must meet academic and attendance requirements, maintain passing grades and demonstrate citizenship and decorum. Uniform enforcement of the ASD's eligibility standards is important to the maintenance of fairness in team selection, team morale, school pride and a proper perspective towards extracurricular activities.

From a practical standpoint, application of the ASD's academic and disciplinary standards to hundreds of non-ASD home school students would be an administrative nightmare. Substantial administrative time and additional resources would be required to ensure that the ASD's rules are applied uniformly to ASD and non-ASD students.

For example, the ASD requires students who participate on interscholastic sports teams to be in regular attendance at school and in classes. A student must be in attendance for half of the day in order to attend practice or play in a game that day. ASD eligibility rules also require a 2.0 grade point average for all classes taken, and enrollment in at least four classes that lead towards graduation. Students may lose participation rights for violation of the ASD's training rules pertaining to the use of drugs, alcohol and tobacco, as well as for behavioral infractions that occur during the regular school day. If HB 156 were enacted, it would be difficult, if not impossible, to apply and enforce the ASD's standards to home school students. Determining comparability of grading systems would be extremely burdensome, if at all possible. Similarly, keeping track of the daily attendance of students in their home school classes would be next to impossible.

The ASD not only lacks the administrative capacity, but more importantly, it lacks any legal authority to require home schools to adhere to ASD's academic and disciplinary standards. Enactment of HB 156 would therefore result in a "double" standard--one for ASD students and a multitude of "standards" for home school students. Enactment of HB 156 stands to seriously undermine the ASD's ability to set eligibility standards, control its academic and extracurricular programs, and operate its extracurricular activities in a cost effective manner. From an administrative standpoint, the burdens imposed by HB 156 are so substantial that they can be met, if at all, only through inordinate additional costs and intrusion by the ASD into the home school operations.

4. Constitutional and Other Legal Issues: HB 156 raises substantial constitutional questions. Home schools are private schools established for a variety of reasons, including religious reasons. Permitting home school students to participate in ASD sponsored extracurricular activities likely violates the Alaska Constitution's prohibitions against providing direct benefits to secular or other private schools. AK. Const. art. VII, sec. 1. It

may also violate prohibitions against using public funds for a non-public purpose. AK. Const. art. IX, sec. 6.<sup>5</sup>

Home schools are clearly the sole beneficiaries of HB 156. The primary effect of HB 156 will be to subsidize the curriculum of private and secular home schools at the expense of public school students. Such subsidization constitutes a substantial direct benefit to home schools. School districts which permit home school students to participate in extracurricular programs pursuant to HB 156 will likely face costly legal challenges under the state and federal constitutions by the ACLU or others.

Enactment of HB 156 will also invite further Blomfield-type litigation by other private school students who see HB 156 as conferring an equal "right" for all non-enrolled students to participate on ASD interscholastic athletic teams. Although the ASD prevailed in the Blomfield lawsuit, it incurred thousands of dollars in litigation expenses and fees. The public interest is not well served by enacting legislation which is legally unsound and invites this type of costly litigation.

---

<sup>5</sup> Those who favor the approach of HB 156 may argue that participation is a benefit to the student, rather than to the private school the student attends. However, the Alaska Supreme Court has rejected similar arguments. See Matthews v. Quinton, 362 P.2d 932 (Alaska 1961); Sheldon Jackson College v. State, 599 P.2d 127 (Alaska 1979).

Attachment 2

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

SANDRA I. BLOMFIELD, and )  
minor children, )  
A.J.B.; L.A.B.; M.S.G.; )  
S.E.W. and M.J.B., )

Plaintiffs, )

vs. )

ANCHORAGE SCHOOL DISTRICT; )  
ALASKA SCHOOL ACTIVITIES )  
ASSOCIATION, INC.; AND STATE )  
BOARD OF EDUCATION, )

Defendants. )

CASE NO. JAN-93-2740 CIV

MEMORANDUM OF DECISION AND  
ORDER GRANTING DEFENDANTS' AND DENYING  
PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT

This case involves plaintiffs' challenge to rules promulgated by defendants which limit participation in public school extracurricular activities to students enrolled in the public schools. The plaintiffs are individuals (and one parent of two of those individuals) who attend or wish to attend private schools and students who receive their education through correspondence or home schooling. The students involved wish to participate in interscholastic activities offered by the Anchorage School District. The defendants include the District ("ASD"), the State Board of Education ("Board") and the Alaska School Activities Association, Inc. ("ASAA").

Plaintiffs' complaint asks the court to invalidate defendants' rules based on alleged violations of due process and equal protection guarantees under both the state and federal constitutions. The complaint also claims violations of plaintiffs'

civil rights and rights to liberty, pursuit of happiness and the enjoyment of the rewards of their own industry under Alaska's constitution.

In plaintiffs' briefing, their counsel emphasizes arguments arising under the direct benefits clause in the Alaska Constitution and the free exercise and establishment clauses of the state and federal constitutions. Those provisions involve questions of religious freedom. Plaintiffs themselves, however, specifically disavow any religious motivation for their decision to obtain education outside of the public school system. Accordingly, the court will disregard the religion-based arguments on the grounds of relevance.<sup>1</sup>

The parties agree that there are no disputed issues of fact. Accordingly, the case turns on resolution of the legal contentions raised in plaintiffs' complaint.

#### A. The Civil Rights Claim

Art. I, Sec. 3 of the Alaska Constitution provides: "No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex or national origin. The legislature shall implement this Section." Title 18.80 of the Alaska Statutes establishes rights and remedies pursuant to this mandate. As noted above, plaintiffs have denied any religious basis for their education choices. Furthermore, plaintiffs have

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<sup>1</sup> The direct benefits arguments are irrelevant for the additional reason that this suit does not challenge a rule which allows parochial students to participate in public school activities. Rather, the focus in this litigation is whether the defendants are obligated to include non-public students in public extracurricular activities.

not alleged any violation of Title 18.80. Accordingly, plaintiffs have not placed themselves in any protected class warranting relief under Art. I, Section 3.

#### B. The Liberty Claim

Plaintiffs rely on Breese v Smith, 501 P.2d 159 (Alaska 1972), to support their liberty claim. In Breese, the court noted first that Article VII, Section 7 guarantees all Alaskan children a public education. The court described the core of the concept of "liberty" embodied in Article I, Section 1 as "the notion of total personal immunity from governmental control: the right 'to be let alone.'" Id. at 168. The court concluded that the right of students to select their own hairstyle constitutes a fundamental constitutional right. Id. at 170. As such, the Fairbanks North Star School District and the school and principal involved were required (and ultimately failed) to demonstrate a compelling state interest to overcome Breese's challenge to his school's hair length rule.

Plaintiffs argue that if the right to liberty includes hair length choices, certainly it must also encompass the seemingly more significant right to participate in interscholastic activities in the public schools. There are three fallacies with this argument, two of which also apply to plaintiffs' allegations pertaining to due process and equal protection, discussed, infra.

First, specific to the liberty issue, there is an obvious distinction between a constitutional requirement to refrain from intruding upon an individual's right to control his or her own

person, versus the demand made here that a governmental entity affirmatively provide services to individuals.

Second, in Breese, the student was precluded from enjoying his right to a public education as a result of exercising his liberty rights. In the present situation, the school system welcomes the plaintiffs. Defendants do not require plaintiffs to make a "Hobson's choice" between religious freedom or other specially protected rights and the right to participate in extracurricular programs. It is through plaintiffs own choosing that they absent themselves, or wish to absent themselves, from the realm of public education. See, Thomas v. Allegany County Board of Education, 443 A.2d 622 (Md. App. 1982).<sup>2</sup>

Finally, as suggested above, the right to engage in interscholastic activities is not a fundamental right. Steffes v. Cal. Intersch. Fed., 222 Cal. Rptr. 355, 360-61 (Cal. App. 2 Dist. 1986). While then Chief Justice Bird expressed a contrary view in her concurring opinion in Hartzell v. Connell, 689 P.2d 35 (Cal. 1984), neither California nor any other court has adopted this position.

The policies promulgated by all the defendants in this case establish the subordinate position of extracurricular activities in Alaska vis-a-vis the schools' academic programs.

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<sup>2</sup>Although not pled, plaintiffs argue that the right to choose a particular form of education implicates their right to privacy, which somehow aligns them more with the reasoning in Breese. The right to privacy was not pleaded in the complaint. By way of dictum, the court finds that defendants' rules do not infringe in the slightest upon plaintiffs' right to privacy.

Interscholastic activities unquestionably have value, and certainly have great importance to the plaintiffs in this case. But these facts do not elevate such activities to the level of fundamental rights warranting special constitutional protections.

C. The Equal Protection Claims.

Plaintiffs allege that defendants discriminate against them versus students enrolled in the public schools on the basis of plaintiffs' placement outside the public system.

Under federal law, education itself is not a fundamental right. San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 35, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973). Nor is the classification of public/non-public school students "suspect." Accordingly, defendants' distinction must be upheld under the U.S. Constitution if supported by a rational basis. Denis J. O'Connell High School v. Virginia High School, 581 F.2d 81, 85 (4th Cir. 1978).

The affidavit submitted by A.S.D.'s William Mell articulates several rational policy reasons for the exclusion from extracurricular activities of students not enrolled in the District. First, it is undisputed that ASD's state funding is provided on a per-pupil basis. If students not enrolled in the District participate in athletic programs there, they effectively drain down the state/local funding without contributing to the "body count" which generates that funding. Mell describes additional concerns with eligibility supervision and administration of discipline. These suffice to meet the rational basis test.

Under the Alaska Constitution, the Alaska Supreme Court applies a sliding scale of scrutiny in analyzing claimed denials of equal protection. State v. Erickson, 574 P.2d 1, 11-12 (Alaska 1978). In Sonneman v. Knight, 790 P.2d 702 (Alaska 1990), the court described the appropriate three step analysis:

First, it must be determined . . . what weight should be afforded the constitutional interest impaired by the challenged enactment. . . .

Second, an examination must be undertaken of the purposes served by a challenged statute. . . .

Third, an evaluation of the state's interest in the particular means employed to further its goals must be undertaken.

Id. at 704, citing, Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264, 269 (Alaska 1984). Sonneman held that unemployment benefits warrant protection only at the lowest end of the scale. As is true under federal law, generally the strictest scrutiny is reserved for cases in which there is either a suspect classification or a fundamental right involved.

As discussed above, the right to participate in interscholastic activities does not rise to the level of a fundamental right. It is certainly not entitled to more weight than unemployment benefits. Additionally, plaintiffs have not suggested that the classification is suspect. It is not based on categories such as race or religion, nor on conditions such as wealth. As noted, supra, defendants' classifications bear a fair and substantial relationship to the accomplishment of legitimate ASD and state objectives. Accordingly, defendants' rules must be upheld against attack under state equal protection law.

D. The Due Process Claim

Finally, plaintiffs complain that defendants' refusal to allow non-enrolled students to participate in extracurricular activities contravenes substantive due process.

Boyd v. Board of Directors, 612 F. Supp. 86 (E.D. Ark. 1985), and Pelgram v. Nelson, 469 F. Supp. 134 (M.D.N.C. 1979), support plaintiffs' claim to a property right in these activities. The better reasoned cases, however, hold to the contrary. E.g., Menke v. Ohio High School Athletic Ass'n., 441 N.E. 2d 620 (Ohio 1981); Yellow Springs Exempted Village Sch. Dist. B. of E. v. Ohio High Sch. Ath. Ass'n., 443 F. Supp. 753, 758, n. 37 (S.D. Ohio 1978) and Denis J. O'Connell High Sch. v. Virginia High Sch., supra.

Even if the entitlement to participate in extracurricular activities were recognized as a property interest, substantive due process requires only that there be a rational basis for the challenged regulation. Concerned Citizens of So. Kenai Pen. v. Kenai Pen. Bor., 527 P.2d 447, 452 (Alaska 1974). As discussed, supra, such basis exists.

ORDER

Based on the foregoing reasoning, IT IS ORDERED that plaintiffs' motion for summary judgment is DENIED and defendants' motions are GRANTED.

Dated at Anchorage, Alaska this 2nd day of August 1994.

J. M. Woodward  
JOHN M. WOODWARD  
SUPERIOR COURT JUDGE

I certify that on 8-2-94  
a copy of the above was mailed to each  
of the following at their addresses of  
record:

[Signature] Secretary/Deputy Clerk  
[Signature] 7  
[Signature]  
[Signature]

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB 225

Revision Date: \_\_\_\_\_  
Title: An act relating to access to extracurricular school programs by non-public school students  
Sponsor: Senator Green  
Requester: Senator Green

Department Affected: Education  
BRU: Executive Administration  
Component: Commissioner's Office

COMPONENT SERIAL NO. 185

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY96) impact: \$ 0.0

**ANALYSIS: (Attach a separate page if necessary.)**

Senate Bill 225 requires school districts to allow non-public school students to participate in a district's extracurricular activities, such as athletic programs, music, band, drama, and debate. The legislation will have no fiscal impact on the department. However, school districts would incur additional costs associated with expanding extracurricular programs to meet increased demand.

Prepared by: Kimberly Homme, Special Assistant  
Division: Commissioner's Office  
Approved by Commissioner: *Richard S. Cross*  
Agency: Education

Phone: 465-2803  
Date: February 6, 1996  
Richard S. Cross, Deputy Commissioner  
Date: February 6, 1996

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

For further distribution information call the Governor's Legislative Office

To: Senate HESS Committee

From: Maggie Reilly, parent of both homeschooled and public schooled children

We have homeschooled our four boys in Kasilof since they were in kindergarten. At first they were on a private curriculum but as they grew older, we switched to the KPSD correspondence curriculum which made them eligible to play sports for Skyview High School. The boys worked hard on their school and received good grades. In the three years that the older two were on this program they received only one B, the rest were all A's. You might feel this was because it was an easy program but I have talked with teachers and administrators who are familiar with the program who say it is one of the most rigorous offered. The older two are currently enrolled in Skyview High School and played football this past fall and are involved in the wrestling program now as of the first semester their grade point average is 4.0. The younger two are still at home but plan to attend Skyview in the future. It is my feelings that homeschooled children should have the opportunity to participate in any extracurricular activity that is offered at the school in their district for a number of reasons.

First of all it is my understanding that the sports programs are a privilege that is funded from both state and local taxes. Privileges should be offered to all the children. Parents of both homeschooled and public schooled children pay into the local general fund which supplies 40% of the sports program. The other 60% comes from the state moneys which belongs to all of us no matter where our children are educated. This program is then supplemented with activity fees and Booster Club of which I was a part.

Last year it cost \$7,200 per student to educate a child in the KPSD. This did not include the sports program. Home schooling saves the state at least \$7,200 per student. That is money that could be allocated somewhere else. Should people who are willing to live as a one income family plus save the state money each year, (\$28,800 in our family) be excluded from a program that cost \$2.00 per student to join ASAA. I believe this is a monetary issue with the individual school districts as they are out a substantial amount of money if we keep our kids at home.

I have been questioned by concerned citizens whether or not it is possible for a student who does not attend a school whether or not he can truly represent that school. From our experience when the older two boys were on homeschool but playing for Skyview, they were both chosen as team captains and received the players awards from both the football and the wrestling teams. This showed me that the coaches and the players both felt that two kids who don't even attend their school were very much a part of the team and school spirit. However, all children are individuals and some that go to the school may represent the school in an acceptable manner and others may not. The same is true for those outside the school districts attendance area.

I have also heard the argument that we have no way of testing kids who aren't on an accredited curriculum and therefore should not allow them the privilege to participate in sports if they are not receiving an education. Under the present eligibility rules a child has to receive a passing grade in 4 classes, three which have to be with the school district. If a child can play sports for the school with a D-, is it really our main concern that the children not in attendance at that school are not getting an education? Has a child with a D- really received an education? I feel that if a parent is willing to spend that much time with their children they are probably just as concerned as the school district, if not more, that their children get a good education, with some parents requiring a higher standard of eligibility for extracurricular activities. Some people feel there would be no way to test kids who weren't going to the school to check eligibility. There is

an easy solution to this problem and the State of Oregon uses it along with a few other states. In the fall those wanting to participate must take a standardized test and those that pass at the 23% (D-) are allowed participation. It sounds awful but that is what our schools are allowing.

I strongly urge you to vote to support the best interest of the children and to give each one full advantage of what we have as a state, community, and schools to offer them that they might achieve their highest potential. Let nonpublic school students participate in extracurricular activities if they so chose.

*Thank you*  
*Maggie Ralby*

*2-6-96*