

SB

167



SENATOR FRED DYSON

SPONSOR STATEMENT SB 167 "An Act relating to Student Credits"

The innovation and success of Alaskans in dealing with the challenges of providing quality government services in our great and wonderful frontier is something we take pride in. One of our biggest challenges and most rewarding successes is our "system of public schools open to all children of the State"¹.

More specifically, a number of school districts have developed distance learning programs using computers, internet access, home multifunction office machines, subscription to premium online educational services, certified teacher support, academic accountability standards, and superb parent \leftrightarrow public school collaboration. These programs serve approximately 10,000 students who are performing well on our standardized tests. The parents of these children are supportive and protective of their own children and the public school support services that have been made available to them. Public school district correspondence programs represent the kind of innovation that makes Alaska a place we can be proud of.

Two years ago a process was initiated by the Alaska Department of Education and Early Development (EED) to establish standardized regulations and spending guidelines for statewide correspondence programs as a reaction to concerns over potential and alleged abuses. In 2004 the regulations were established as another example of cooperation between parents, school districts and the department.

Several statewide correspondence program were found to be deficient on several items based on an interpretation of AS 14.03.090 that is challenged by SB 167. Essentially, the EED interpretation of this statute seems to be that a school district cannot give student credit or grades for academic achievement acquired using curriculum materials that advocate partisan, sectarian or denominational doctrines--- even though the material is clearly purchased with personal family money and used by the parent to teach their children reading, writing, and mathematics. This interpretation seems to be a clear challenge to what is normal operating procedure in the United States and a stretch of legislative intent.

AS 14.03.090 prohibits public schools (not curriculum materials) from *advocating* "partisan, sectarian, or denominational doctrines...". SB 167 simply clarifies that the legislature does not require parents to censor curriculum they purchase with their own money and that even if they choose to advocate religion to their own children using these materials, they can get public school credit for the academic achievement that aligns with state performance standards. By giving credit and grades for aligned achievement, a correspondence program is NOT "advocating" anything but academic achievement. A professional teacher is trained to give a reading, writing, or mathematics grade or credit without advocating the perspective advocated in the curriculum material or they wouldn't be able to teach things like literature and critical thinking skills.

Updated 4/7/05

¹ Section 7.1 Public Education, Alaska Constitution.

Constitution Section 7.1 - Public Education.

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

EED Regulation 4AAC 4AAC 33.421(c)

(c) In accordance with AS 14.07.050¹, AS 14.08.111², and AS 14.14.090³, the program must use curriculum materials, including textbooks and other instructional aids, that have been reviewed and selected by the school board of the district, are of the same quality as those materials that the district offers in the district's other programs, and are in compliance with AS 14.03.090⁴ and AS 14.18.060⁵.

¹ **Sec. 14.07.050. Selection of textbooks.**

Textbooks for use in the public schools of the state, including a district offered statewide correspondence study program, shall be selected by district boards for district schools. Nothing in this section precludes a correspondence study student, or the parent or guardian of a correspondence study student, from privately obtaining or using textbooks or curriculum material not provided by the school district.

² **Sec. 14.08.111. Duties.** A regional school board shall

- (1) provide, during the school term of each year, an educational program for each school age child who is enrolled in or a resident of the district;
 - (2) develop a philosophy of education, principles, and goals for its schools;
 - (3) approve the employment of the professional administrators, teachers, and noncertificated personnel necessary to operate its schools;
 - (4) establish the salaries to be paid its employees;
 - (5) designate the employees authorized to direct disbursements from the school funds of the board;
 - (6) submit the reports prescribed for all school districts;
 - (7) provide for an annual audit in accordance with AS 14.14.050;
 - (8) provide custodial services and routine maintenance of school buildings and facilities;
 - (9) establish procedures for the review and selection of all textbooks and instructional materials, including textbooks and curriculum materials for statewide correspondence programs, before they are introduced into the school curriculum; the review includes a review for violations of AS 14.18.060; nothing in this paragraph precludes a correspondence study student, or the parent or guardian of a correspondence study student, from privately obtaining or using textbooks or curriculum material not provided by the school district;
 - (10) provide prospective employees with information relating to the availability and cost of housing in rural areas to which they might be assigned, and, when possible, assist them in locating housing; however, nothing in this paragraph requires a regional school board to provide teacher housing, whether owned, leased, or rented or otherwise provided by the regional educational attendance area, nor does it require the board to engage in a subsidy program of any kind with respect to teacher housing; and
 - (11) train persons required to report under AS 47.17.020, in the recognition and reporting of child abuse, neglect, and sexual abuse of a minor.
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³ **Sec. 14.14.090. Duties of school boards.** In addition to other duties, a school board shall

(1) determine and disburse the total amount to be made available for compensation of all school employees and administrative officers;

(2) provide for, during the school term of each year, an educational program for each school age child who is enrolled in or a resident of the district;

(3) withhold the salary for the last month of service of a teacher or administrator until the teacher or administrator has submitted all summaries, statistics, and reports that the school board may require by bylaws;

(4) transmit, when required by the assembly or council but not more often than once a month, a summary report and statement of money expended;

(5) keep the minutes of meetings and a record of all proceedings of the school board in a pertinent form;

(6) keep the records and files of the school board open to inspection by the public at the principal administrative office of the district during reasonable business hours;

(7) establish procedures for the review and selection of all textbooks and instructional materials, including textbooks and curriculum materials for statewide correspondence programs, before they are introduced into the school curriculum; the review includes a review for violations of AS 14.18.060; nothing in this paragraph precludes a correspondence study student, or the parent or guardian of a correspondence study student, from privately obtaining or using textbooks or curriculum material not provided by the school district;

(8) provide prospective employees with information relating to the availability and cost of housing in rural areas to which they might be assigned, and, when possible, assist them in locating housing; however, nothing in this paragraph requires a school district to provide teacher housing, whether district owned, leased, rented, or through other means, nor does it require a school board to engage in a subsidy program of any kind regarding teacher housing;

(9) train persons required to report under AS 47.17.020, in the recognition and reporting of child abuse, neglect, and sexual abuse of a minor;

(10) provide for the development and implementation of a preventative maintenance program for school facilities; in this paragraph, "preventative maintenance" means scheduled maintenance actions that prevent the premature failure or extend the useful life of a facility, or a facility's systems and components, and that are cost-effective on a life-cycle basis.

⁴ **Sec. 14.03.090. Partisan, sectarian, or denominational doctrines prohibited.**

NOTE: UNDERLINED AND BOLD LANGUAGE SHOWS CHANGES BY SB 167--- THEY ARE NOT IN CURRENT LAW.

(a) Except as provided in (b) of this section, partisan, sectarian, or denominational doctrines may not be advocated in a public school during the hours the school is in session. A teacher or school board violating this section may not receive public money.

(b) Nothing in this section prohibits a school district that operates a correspondence study program from giving credit for the completion of curriculum using materials purchased with private funds from a religious institution if the materials are otherwise aligned with state performance standards.

Sec. 14.18.060. Discrimination in textbooks and instructional materials prohibited.

(a) School boards shall have textbooks and instructional materials reviewed for evidence of sex bias in accordance with AS 14.08.111 (9) and AS 14.14.090 (7). School boards shall use educationally sound, unbiased texts and other instructional materials as they become available. Nothing in this section prohibits use of literary works.

(b) The board shall establish by regulation standards for nondiscriminatory textbooks and educational materials. Each school board shall provide training for all its certificated personnel in the identification and recognition of sex-biased materials.

(c) The Board of Regents shall establish and implement a policy under AS 14.40.170 (b) for the guidance of officers and employees of the university on the selection of nondiscriminatory textbooks and educational materials.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 167
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: EED
Title An Act authorizing credit in a public RDU Teaching & Learning Support
correspondence program for curriculum materials Component Student & School Achievement
Sponsor Sen. Dyson
Requester _____ Component No. 2796

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 00
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The department had identified no costs related to this bill, because the bill does not allow for the credits being issued under Section 2 to be counted as FTE for state funding purposes, and does not change any current practice.

Prepared by: Barbara Thompson, Director Phone 465-8727
Division Teaching & Learning Support Date/Time 4/18/05 7:03 AM
Approved by: _____ Date 04/18/2005
Agency _____

STATE OF ALASKA

Department of Education & Early Development

FRANK H. MURKOWSKI, GOVERNOR

COPYGoldbelt Place
801 West 10th Street, Suite 200
Juneau, Alaska 99801-1894

Teaching & Learning Support

March 14, 2005

Dear [REDACTED]

Attached is the copy of the Statewide Correspondence Program Monitoring Template that was used for the February 7, 2005, monitoring conducted by John Tongen. Below are required *Corrective Actions* related to compliance deficiencies with state regulations, as defined in 4 AAC 33.405-490.

For any *Corrective Actions* listed, please submit a plan for how the district will implement the corrective action listed and/or any other strategy the district may employ to address the corrective action. Responses to any corrective action must be submitted to Louie Yannotti, within 45 days of receipt of this letter. Mr. Yannotti can be reached at 907-465-8720 or Louie_Yannotti@eed.state.ak.us.

Failure to respond within the specified timeline may result in program closure.

Section I Curriculum

Deficiency

1. A,B,C & 3 The [REDACTED] program is in violation of the regulation 4AAC 33.421(c) that states:
In accordance with AS 14.07.050, AS 14.08.111, and AS 14.14.090 the program must use curriculum materials, including textbooks and other instructional aids, that have been reviewed and selected by the school board of the district, are of the same quality as those materials that the district offers in the district's other programs, and are in compliance with AS 14.03.090 and AS 14.18.060.

[REDACTED] includes in their program curriculum materials that are not in compliance with AS 14.03.090. [REDACTED] has banned religious curriculum from their district purchases, but believes that if the parent privately purchases the material then the course can be included in their program. Being included in their program means being incorporated in the Individual Learning Plan, work progress papers being reviewed quarterly by the assigned certified teacher, and grades for such coursework being assigned to [REDACTED] transcripts. [REDACTED] also uses the religious coursework to determine the 50% core coursework requirement and uses the coursework for counting FTE, as it applies to the OASIS report for funding purposes. This practice is in violation of 4 AAC 33.426 and AS 14.03.090.

Mr. Tongen reviewed 325 current student files and his findings are below:

- 52 student files with 3 or more coursework (per file) in violation of AS 14.03.090
- 18 student files with 2 coursework (per file) in violation of AS 14.03.090
- 11 student files with 1 coursework (per file) in violation of AS 14.03.090

25% of student files reviewed include coursework in the [REDACTED] program that was in violation of AS 14.03.090.

Corrective Action

- Submit a plan or assurance that curriculum material, including textbooks and other instructional aids:
 - have been reviewed and selected by the school board of the district
 - are of the same quality as those materials that the district offers in the district's other programs, and
 - are in compliance with AS 14.03.090 and AS 14.18.060
- Submit to the Department a corrected OASIS report that properly reflects correct student FTE by eliminating coursework that is in violation of AS 14.03.090. Also, make the proper corrections to the FTE as you eliminate the AS 14.03.090 coursework to the 50% minimum coursework requirement.

Section II District Assessment Plan

Deficiency

Page 18 of the [REDACTED] Parent Handbook states: "The parent or guardian is the primary teacher. Although enrolled students may participate in guided instruction in some subjects, the intent is for the parent or guardian to be primarily responsible for the students education." Page 20 of the Handbooks states: " Include grades for all subjects listed on the ILP. May use any of several grade indicators for grades K-3, but typical letter grades must be used after grade 3. Turn into your contact teacher."

Also, the High School ILP provides for the parent to elect to grade the coursework by checking a box.

In the processes described above, it appears that student grades are not being determined by a certified teacher assigned to the student (4 AAC 33.421(e)(3)) and that the certified teacher does not have the primary responsibility to plan, instruct, and evaluate the student's learning (4 AAC 33.421(l)(3)). The certified teacher approves the Individual Learning Plan (ILP), makes at least monthly contact, and reviews the student's work at least quarterly. A certified teacher may review and consider recommendations submitted by the student and parents, but student grades, or other determinations that the course standards are met, must be made by a certificated teacher.

Corrective Action

- Submit new handbook language that clearly states that student grades are determined by a certified teacher, define the role of the contact teacher, in that, the contact teacher has the primary responsibility to plan, instruct, and evaluate the student's learning.
- Submit a plan for correcting this deficiency during the 2004-2005 school year.

Section VII Miscellaneous

Deficiency

Enrollment — Parent Handbook states on page 4, "the student must take at least four classes with [REDACTED], at least two of which must be core classes". This practice is in violation of the part-time attendance law, AS 14.03.095 Part-time school attendance: "A governing body shall, upon request, allow a child including a child who is also enrolled at a private school, is a correspondence student, or is being home schooled, to enroll as a part-time student in the district. A governing body may not discriminate between part-time and full-time students." Additionally, 4 AAC 090.040, Counting of correspondence students and part-time public school students, describes the criteria for full-time and part-time students.

Eight senior students were listed on the OASIS report as full time equivalent but were in fact less than full time equivalent. A list of those students are: [REDACTED] (.25 FTE), [REDACTED] (.50 FTE), [REDACTED] (.25 FTE), [REDACTED] (.25 FTE), [REDACTED] (.50 FTE), [REDACTED] (.25 FTE), [REDACTED] (.25 FTE), [REDACTED] (.75 FTE).

Corrective Action

- Remove the Parent Handbook language that requires students to take at least four classes with IDEA.
- Submit a corrected OASIS report that reflects the correct FTE of the eight senior students listed.

Deficiency

Because 45% of ILP's are not turned in by the programs deadline of 9-17-04, the FTE on the OASIS report is only a guess and not a fact. IDEA should emphasize to parents the importance of getting ILP's completed in a timely manner that will enable the District to have a more accurate OASIS report.

Corrective Action

- Submit a plan and assurance that addresses this deficiency and will result in a timely completion of student ILP's and accurate OASIS student counts.

I wish to thank you and your staff for the cooperation during the monitoring process

MEMORANDUM

State of Alaska
Department of Law

To: Hon. Roger Sampson, Comm'r
Department of Education and
Early Development

Date: April 18, 2005

File No:

Tel. No.: (907) 465-3600

Fax: (907) 465-2520

From: Kathleen Strasbaugh
Assistant Attorney General

Subject: Sectarian materials and
correspondence schools

I. Introduction and Short Answer

You have asked if the Department of Education and Early Development's (EED) interpretation of AS 14.030.090 to limit the use of sectarian materials by public correspondence schools is correct and consistent with prior opinions of this office. We agree that it is, and that in any case, use of such materials likely violates the state and federal constitutions.

II. Discussion

As we understand it, EED has found in monitoring statewide correspondence schools that sectarian religious materials have been used as course material counted by districts toward the meeting the 50% core coursework requirement of AS 4 AAC 33.426, and toward counting full time equivalents for foundation funding purposes. We agree with your conclusions that the use of the materials is prohibited by AS 14.03.090, and that such course work cannot, as delivered by the affected districts, be used toward the requirements of 4 AAC 33.426 or for the purpose of foundation funding.

EED's monitor further found that certain correspondence programs' student learning plans, while supervised by a certified teacher, did not clearly call for the teacher to determine grades, in violation of 4 AAC 33.421(e)(3) and (l)(3). There are certain other findings, but as we understand it, what is at issue is the application of AS 14.03.090 to the sectarian materials. To address this we must look not only at the statute, but contemplate whether using these materials with the supervision of public school teachers entangles the public school in religious advocacy in violation of the state and federal constitutions.

AS 14.03.090 provides:

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Re: Sectarian materials & correspondence programs

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Sec. 14.03.090. Partisan, sectarian, or denominational doctrines prohibited. Partisan, sectarian, or denominational doctrines may not be advocated in a public school during the hours the school is in session. A teacher or school board violating this section may not receive public money.

This law, which has been in effect since 1966, prohibits advocacy of sectarian or denominational doctrines. While it uses terminology more easily applied to the traditional classroom, it applies to public schooling however delivered. However, even if the law were interpreted not to apply to correspondence schools, there would still be a problem under the First Amendment to the United States Constitution, and article I, section 4 of the Alaska Constitution.

We have addressed the interpretation of AS 14.03.090, and First Amendment issues in correspondence study in our prior opinions. 1988 Inf. Op. Att'y Gen'l at 1 (663-88-0573; September 15) (AS 14.030.090 means that while teachers can discuss different religions, they may not teach any particular set of beliefs as true beliefs); 1993 Inf. Op. Att'y Gen'l at 4 (663-93-0179; March 18) (discussing what constitutes government entanglement with religions, opining that contracting with a religious institution by the centralized correspondence school would likely result in entanglement); 1993 Inf. Op. Att'y Gen'l at 2 (663-93-0394; June 24) (discussing the delivery of services to part-time students who are enrolled in private schools, citing case law holding that state-paid teachers teaching in religious school classrooms would amount to government entanglement). We have attached these opinions for your convenience.

The March 18 opinion sets out the framework for analysis:

The First Amendment to the U.S. Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . [.]" Although by its terms it applies to Congress, the amendment has been made applicable to the states by incorporation into the Due Process Clause of the Fourteenth Amendment. The Alaska Constitution, article I, section 4, contains a similar prohibition: "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof." In *Lemon v. Kurtzman*, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971), the United States Supreme Court articulated a three-part test to determine whether a statute offends the first amendment. A later case phrased the test as follows:

"In order to pass muster, a statute must have a secular legislative purpose, must have a principal or primary effect that neither advances nor inhibits religion, and must not foster an excessive

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Re: Sectarian materials & correspondence programs

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government entanglement with religion. *Wolman v. Walter*, 433 U.S. 229, 236, 97 S. Ct. 2593, 2599, 53 L. Ed. 2d 714, 725 (1977). The Alaska Supreme Court applied the same test in considering whether a statute offended the federal or state constitution. *Bonjour v. Bonjour*, 592 P.2d 1233 (Alaska 1979).

1993 Att'y Gen'l Op. at 4 (663-93-0179; March 18).

Applying this framework to the situation at hand, while the correspondence program itself is secular in purpose, the use of religious materials fails the second and third prongs of the test. As we understand it, the materials advocate particular religious teachings, even though academic, and thus fail the second prong of the test. The adoption by the correspondence school of these materials as counting toward school sponsored core curriculum funded by the state, which must be taught and graded by certified public school teachers, unduly entangles the program and the teachers in religious matters, and thus fails the third prong of the test, even though the correspondence school does not pay for them and has a policy banning the purchase of such documents.

We note that under AS 14.03.095, children may be enrolled in a public school on a part time basis. The children's parents can employ the sectarian curriculum for the courses they wish, and enroll their children in correspondence school for other courses. But the correspondence schools must deliver a course of study under 4 AAC 33 by certified teachers, with materials that are in compliance with AS 14.30.090. And foundation funding can only be applied to correctly delivered correspondence school course work.

III. Conclusion

We concur with the application of law and regulations in the monitoring reports in question, and we believe it is in line with our past advice. Please let us know if you would like us to explore this issue in greater detail.

Section 1:

SSSB 167 is challenging censorship of Alaska public school instructional materials.

Section 2: Other perspectives of the problem

Section 3: Text of SSSB 167

Section 4: Sponsor Statement

Section 5: Sectional Analysis

Section 6: Appendix

Section 2:

Our understanding of the different perspectives of the problem.

Section 3:

Text of SSSB 167

Section 4:

Sponsor Statement

Section 5:

Sectional Analysis

Section A:

SB 167 challenges current EED policy and practice related to censorship.

EED regulations and policy clearly require¹ **censorship**² of public school instructional materials³ to exclude any use of religious materials. The censorship is aimed at only one public school program; statewide correspondence programs operated by school districts⁴ and does not apply to other correspondence programs or any other public school.

- It is not illegal to censor. It is however, detrimental to censor instructional materials because they hold a particular world view, especially when it is the particular world view of a student's parents. It is not practical to expect a teacher to teach critical thinking skills if we allow regulations that require a broad ban on curriculum materials.
- It seems likely that it is illegal to apply censorship to only one type of public school program.
- It is clearly illegal and unconstitutional for a public school teacher to advocate for any particular party, sect, or denomination. It is unreasonable to assume that a teacher's use of materials prepared from the perspective of any given world view is therefore guilty of advocating for that world view.

¹ **"require"**: As demonstrated by; EED numbered memorandum, November, 1997; 4 AAC 33.421(c) & (g) (2)&(3), and; EED Audit letters to statewide correspondence programs dated March 14, 2005. These documents are attached in Appendix A

² Webster's definition of **"Censorship"**: Supervision of conduct and morals: as **a** : an official who examines materials (as publications or films) for objectionable matter **b** : an official (as in time of war) who reads communications (as letters) and deletes material considered sensitive or harmful.

The actual censorship acts of EED include: requirement for school districts to censor religious materials by regulation and policy, and declaration of denial of funding for districts that have not censored (by audit). The proof offered in the audit that districts have not effectively censored is based on coursework in student files, involvement of certified teachers doing progress reports and assigning grades for academic achievement gained using instructional materials that the district determined not to purchase because of the regulations in question. It is outrageous to justify this level of censorship with First Amendment compliance. It is counterproductive and probably impossible to hide the world view of authors and publishers of written materials used in our public schools. It would be impossible, for example, to learn anything in public school about how an Islamic Iraqi thinks.

³ **"instructional materials"** Used here to mean textbooks and any material that is used by a teacher in context of meeting a measurable curricular goal. Instructional materials might include workbooks, flash cards, computer software, periodicals, or even lab materials, etc.; limited only by the imagination and energies of the teacher, available resources, and the values of the parent and teacher. Curricular goals are secular by definition of public schools and assumed to align with the state accountability standards. Public school teachers are prohibited from advocating any partisan, sectarian, or denominational doctrine by Alaska Statute 14.03.090. Instructional materials need not be secular by any law I am aware of and I cannot imagine intellectual development without an interest in understanding the partisan, sectarian, or denominational world view of an author or publisher of instructional materials used by a student.

⁴ **"statewide correspondence programs operated by school districts"** Approximately 10,000 students in Alaska are enrolled in this type of distance education program. It is important to realize that there are **correspondence programs operated by school districts** that are NOT statewide and are therefore not subject to the censorship requirements.

Perspective of Public Correspondence School Parents:

In spite of a law passed in 2002 ^{Page A-3} Correspondence programs have now been told their child will no longer receive credit for academic achievement attained using curriculum materials, textbooks, and learning aids that they have personally purchased. They had been told that they could use religious curriculum materials as long as they paid for them with their own money and they align with the student's personal learning plans that had been created in cooperation with the child's certified public school teacher by a procedure approved by the local school board.

Perspective of District Operated Correspondence Programs :

1. Receipt of memo and subsequent regulations that prohibit purchase of religious materials. (Note that the memo is probably based on AG opinion, and there has never been straightforward statutory authority for the regulations.
2. Receipt of a "monitoring letter" (an audit) that cites the use of "religious curriculum*" for the following applications "... is in violation of... AS 14.03.090" ^{Page A-3} :
 - Incorporation into Individual Learning Plans (ILPs)
 - Incorporation into work progress reports being reviewed quarterly by the assigned certified teacher.
 - Assignment of grades to work progress reports.
 - Use of religious coursework to determine 50% core coursework requirement for counting FTE (authorization for funding)

* "Religious coursework" has been defined on the record by the EED attorney as coursework the school district has chosen to not purchase because of religious content! (In other words, compliance to directions of memo and regulations have led to elimination of credit and funding.) School districts chose to disallow purchase of any curriculum materials and learning aids that have any appearance of being religious in a good-faith response to pressure by EED directives. The districts were also subsequently advised to specifically list the source of all curriculum material in the records --- now EED is saying that any ILP that includes these materials that were disallowed for purchase have become the poison pill that cancels any reimbursement possibility. It certainly appears to be a setup because there is no evidence of testimony, verbal communication, memos, email, or anything else that cautioned or warned the correspondence programs of the pending action.

Perspective of EED.

EED has the fiduciary responsibility for public money going to school districts. Their primary tool to ensure appropriate use of funds is drafting and establishing regulations. EED has stated repeatedly that they have difficulty ensuring that school districts are not being paid for services they are not providing. Evidently the application of AS 14.03.090 ^{Page A-3} to create the regulation 4 AAC 33.421(c), (g) (2)&(3) ^{Page A-2} was the only way they felt they could hold the districts accountable?. There may be other perspectives of the problem that have not been revealed, but that is for them to present. I have never heard anyone from EED express concern about inappropriate use of curriculum material that would suggest a violation of AS 14.03.090.

It is an interesting fact that the regulation applies only distance learning programs *that can recruit students across school district boundaries*. The regulations distinctly do not apply to school districts that operate distant learning programs but do not choose to recruit students from outside of their districts. This is interesting because the fiduciary concerns and dynamics for abuse are identical, but there has been no effort to write similar regulations for similar programs.

Perspective of Attorney General's/ Governor's Office

The Governor and Attorney General have a dilemma. If they admit to supporting inappropriate censorship, they implicate themselves as the perpetrators. On the other hand, the unequal censorship and discrimination is so obvious that they can hardly ignore it. SB 167 annuls the regulations that the AG and Governor feel they need to defend and leaves the identical openness and local control that exists for all other public education programs.

My perspective.

4 AAC 33.421(c), (g) (2)&(3) ^{Page A-2} is, at best, an unwitting misapplication of AS 14.03.090 ^{Page A-}
3. At the worst it is a bureaucracy protecting its monopoly with no thought about educational policy and consequence to Alaska parents and students. The results of EED actions have little, if any, effect on fiduciary accountability. Whether intended or not, the application of the regulation is censorship of valuable curriculum materials. The censorship is interestingly directed at only the one type of distant learning program that can recruit students across district boundaries.

The censorship is offensive and in effect, discriminates against parents who cannot, or will not, send their children to a "brick and mortar" school. It is difficult to imagine that EED or the State School Board intend censorship, so they will have to explain the intent of their actions.

If the issue is the fiduciary responsibility of EED, it would seem far more appropriate to address any documented abuse directly and to use regulations and legislation to build incentives to ensure that public school funding is directed at producing measurable reading, writing, and mathematics results.

BILL ID: SB 167

00 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 167

01 "An Act relating to selection of textbooks and curriculum materials by a public school
02 district or regional attendance area and annulling a regulation relating to statewide
03 correspondence study programs."

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

05 * Section 1. AS 14.07.050 is amended to read:

06 **Sec. 14.07.050. Selection of textbooks and curriculum materials.**

07 Textbooks and curriculum materials for use in the public schools of the state,
08 including a district offered statewide correspondence study program, shall be selected
09 by district boards for district schools Selection of textbooks and curriculum
10 materials shall be based on an evaluation of quality and alignment with statewide
11 accountability standards unless otherwise prohibited by AS 14.18.060. An
12 evaluation of the quality of textbooks and curriculum materials must be based on
13 a determination by the district of how well the textbook or material serves a
14 measurable educational goal and associated teaching method. Nothing in this
01 section precludes a correspondence study student, or the parent or guardian of a
02 correspondence study student, from privately obtaining or using textbooks or
03 curriculum material not provided by the school district.

04 * Sec. 2. AS 14.08.111 is amended to read:

05 **Sec. 14.08.111. Duties.** A regional school board shall

06 (1) provide, during the school term of each year, an educational
07 program for each school age child who is enrolled in or a resident of the district;

08 (2) develop a philosophy of education, principles, and goals for its
09 schools;

10 (3) approve the employment of the professional administrators,
11 teachers, and noncertificated personnel necessary to operate its schools;

12 (4) establish the salaries to be paid its employees;

13 (5) designate the employees authorized to direct disbursements from
14 the school funds of the board;

15 (6) submit the reports prescribed for all school districts;

16 (7) provide for an annual audit in accordance with AS 14.14.050;

17 (8) provide custodial services and routine maintenance of school
18 buildings and facilities;

19 (9) establish procedures for the review and selection of all textbooks
20 and instructional materials, including textbooks and curriculum materials for statewide
21 correspondence programs, before they are introduced into the school curriculum; the
22 review and selection of textbooks and instructional materials shall be based on an
23 evaluation of quality and alignment with statewide accountability standards

24 unless otherwise prohibited under AS 14.18.060; evaluation of the quality of
25 textbooks and instructional materials shall include a determination of how well
26 the textbook or material serves a measurable educational goal and associated
27 teaching method; [THE REVIEW INCLUDES A REVIEW FOR VIOLATIONS OF
28 AS 14.18.060]; nothing in this paragraph precludes a correspondence study student, or
29 the parent or guardian of a correspondence study student, from privately obtaining or
30 using textbooks or curriculum material not provided by the school district;

31 (10) provide prospective employees with information relating to the
01 availability and cost of housing in rural areas to which they might be assigned, and,
02 when possible, assist them in locating housing; however, nothing in this paragraph
03 requires a regional school board to provide teacher housing, whether owned, leased, or
04 rented or otherwise provided by the regional educational attendance area, nor does it
05 require the board to engage in a subsidy program of any kind with respect to teacher
06 housing; and

07 (11) train persons required to report under AS 47.17.020, in the
08 recognition and reporting of child abuse, neglect, and sexual abuse of a minor.

09 * Sec. . AS 14.14.090 is amended to read:

10 § c. 14.14.090. Duties of school boards. In addition to other duties, a school
11 board shall

12 (1) determine and disburse the total amount to be made available for
13 compensation of all school employees and administrative officers;

14 (2) provide for, during the school term of each year, an educational
15 program for each school age child who is enrolled in or a resident of the district;

16 (3) withhold the salary for the last month of service of a teacher or
17 administrator until the teacher or administrator has submitted all summaries, statistics,
18 and reports that the school board may require by bylaws;

19 (4) transmit, when required by the assembly or council but not more
20 often than once a month, a summary report and statement of money expended;

21 (5) keep the minutes of meetings and a record of all proceedings of the
22 school board in a pertinent form;

23 (6) keep the records and files of the school board open to inspection by
24 the public at the principal administrative office of the district during reasonable
25 business hours;

26 (7) establish procedures for the review and selection of all textbooks
27 and instructional materials, including textbooks and curriculum materials for statewide
28 correspondence programs, before they are introduced into the school curriculum; the

29 review and selection of textbooks and instructional materials shall be based on an

30 evaluation of quality and alignment with statewide accountability standards

31 unless otherwise prohibited under AS 14.18.060; evaluation of the quality of

01 textbooks and instructional materials shall include a determination of how well

02 the textbook or material serves a measurable educational goal and associated
03 teaching method;[THE REVIEW INCLUDES A REVIEW FOR VIOLATIONS OF
04 AS 14.18.060]; nothing in this paragraph precludes a correspondence study student, or
05 the parent or guardian of a correspondence study student, from privately obtaining or
06 using textbooks or curriculum material not provided by the school district;

07 (8) provide prospective employees with information relating to the
08 availability and cost of housing in rural areas to which they might be assigned, and,
09 when possible, assist them in locating housing; however, nothing in this paragraph
10 requires a school district to provide teacher housing, whether district owned, leased,
11 rented, or through other means, nor does it require a school board to engage in a
12 subsidy program of any kind regarding teacher housing;

13 (9) train persons required to report under AS 47.17.020, in the
14 recognition and reporting of child abuse, neglect, and sexual abuse of a minor;

15 (10) provide for the development and implementation of a preventative
16 maintenance program for school facilities; in this paragraph, "preventative
17 maintenance" means scheduled maintenance actions that prevent the premature failure
18 or extend the useful life of a facility, or a facility's systems and components, and that
19 are cost-effective on a life-cycle basis.

20 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 ANNULMENT OF REGULATION. 4 AAC 33.421(c) and 4 AAC33.421 (g) (2) & (3)* is annulled.

* this line needs to be added yet to bill language.

Sponsor Statement

SSSB 167 "An Act relating to Selection of Instructional Materials"

In November of 1997, EED issued a memorandum that directed all schools to NOT purchase religious materials. Because this is a weighty directive that has application related to the First amendment of the US Constitution, it is safe to presume that EED received advice from the Attorney General's office before issuing the directive. It is noteworthy that the directive went to all public schools even though the message was undoubtedly for the benefit of newly formulated home school support programs.

Two years ago a process was initiated by the Alaska Department of Education and Early Development (EED) to establish standardized regulations and spending guidelines for statewide correspondence programs as a reaction to concerns over potential and alleged abuses. In 2004 the regulations were established as another example of cooperation between parents, school districts and the department. Unfortunately, the regulations also raised the status of the 1997 memo from an EED directive to Alaska administrative code.

In March of 2005, several statewide correspondence program were found to be deficient on several items based on the 4 AAC 33.421 interpretation of AS 14.03.090 that is challenged by SB 167. Essentially, the EED interpretation of this statute seems to be that a school district cannot give student credit or grades for academic achievement acquired using curriculum materials that advocate partisan, sectarian or denominational doctrines— even though the material is clearly purchased with personal family money and used in a parent-teacher collaboration to teach their children reading, writing, and mathematics. This interpretation seems to be a challenge to correspondence program normal operating procedures and the first amendment of the United States Constitution as well as ignoring legislative intent.

AS 14.03.090 prohibits *advocating* "partisan, sectarian, or denominational doctrines... SB 167 simply clarifies that the legislature does not require parents to censor curriculum they purchase with their own money and that even if they choose to advocate religion to their own children using these materials, they can get public school credit and assistance in the process of teaching their kids to accomplish achievement that aligns with state performance standards. By giving credit and grades for aligned achievement, a correspondence program is NOT "advocating" anything but academic achievement. A professional teacher is trained to give a reading, writing, or mathematics grade or credit without advocating the perspective advocated in any given curriculum material or they wouldn't be able to teach things like literature and critical thinking skills at all.

Updated 4/7/05

Sectional Analysis of SSSB 167

Section 1. Adds language that clarifies how school districts must base their selection of textbooks and curriculum material on quality and alignment with state and local accountability goals. It also specifically prohibits selection of textbooks and curriculum material that is banned in AS 14.18.060 (sex bias).

It is important to realize that even though this is in a chapter defining the department, no authority or responsibility is given to the department related to school textbooks or curriculum.

Section 2: Includes same selection guidance in AS 14.08.111 defining duties of regional school boards.

Section 3: Includes same selection guidance in AS 14.14.090 defining duties school boards.

APPENDIX :

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EED Numbered Memorandum dated November 7, 1997:

(10) provide prospective employees with information relating to the availability and cost of housing in rural areas to which they might be assigned, and, when possible, assist them in locating housing; however, nothing in this paragraph requires a regional school board to provide teacher housing, whether owned, leased, or rented or otherwise provided by the regional educational attendance area, nor does it require the board to engage in a subsidy program of any kind with respect to teacher housing; and

(11) train persons required to report under AS 47.17.020, in the recognition and reporting of child abuse, neglect, and sexual abuse of a minor.

3 Sec. 14.14.090. Duties of school boards. In addition to other duties, a school board shall

(1) determine and disburse the total amount to be made available for compensation of all school employees and administrative officers;

(2) provide for, during the school term of each year, an educational program for each school age child who is enrolled in or a resident of the district;

(3) withhold the salary for the last month of service of a teacher or administrator until the teacher or administrator has submitted all summaries, statistics, and reports that the school board may require by bylaws;

(4) transmit, when required by the assembly or court, but not more often than once a month, a summary report and statement of money expended;

(5) keep the minutes of meetings and a record of all proceedings of the school board in a pertinent form;

(6) keep the records and files of the school board open to inspection by the public at the principal administrative office of the district during reasonable business hours;

Appendix (cont.)

Page A-3.

(7) establish procedures for the review and selection of all textbooks and instructional materials, including textbooks and curriculum materials for statewide correspondence programs, before they are introduced into the school curriculum; the review includes a review for violations of AS 14.18.060; nothing in this paragraph precludes a correspondence study student, or the parent or guardian of a correspondence study student, from privately obtaining or using textbooks or curriculum material not provided by the school district;

(8) provide prospective employees with information relating to the availability and cost of housing in rural areas to which they might be assigned, and, when possible, assist them in locating housing; however, nothing in this paragraph requires a school district to provide teacher housing, whether district owned, leased, rented, or through other means, nor does it require a school board to engage in a subsidy program of any kind regarding teacher housing;

(9) train persons required to report under AS 47.17.020, in the recognition and reporting of child abuse, neglect, and sexual abuse of a minor;

(10) provide for the development and implementation of a preventative maintenance program for school facilities; in this paragraph, "preventative maintenance" means scheduled maintenance actions that prevent the premature failure or extend the useful life of a facility, or a facility's systems and components, and that are cost-effective on a life-cycle basis.

⁴ (The following statute is mis-applied in the offending regulation, 4 AAC 33.421, page A-2.)

Sec. 14.03.090. Partisan, sectarian, or denominational doctrines prohibited.

Partisan, sectarian, or denominational doctrines may not be advocated in a public school during the hours the school is in session. A teacher or school board violating this section may not receive public money.

⁵ (The following statute authorizes the only legal censorship of curriculum materials.)

Sec. 14.18.060. Discrimination in textbooks and instructional materials prohibited.

(a) School boards shall have textbooks and instructional materials reviewed for evidence of sex bias in accordance with AS 14.08.111 (9) and AS 14.14.090 (7). School boards shall use educationally sound, unbiased texts and other instructional materials as they become available. Nothing in this section prohibits use of literary works.

(b) The board shall establish by regulation standards for nondiscriminatory textbooks and educational materials. Each school board shall provide training for all its certificated personnel in the identification and recognition of sex-biased materials.

(c) The Board of Regents shall establish and implement a policy under AS 14.40.170 (b) for the guidance of officers and employees of the university on the selection of nondiscriminatory textbooks and educational materials.

Appendix (cont.):

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EED Audit:

The following is from the "Statewide Correspondence Program Monitoring..." (audit) that was mailed to offending school districts by the Department of Education and Early Development (EED) to school districts on March 14, 2005:

(NOTE: The entire audit is not included because the scope of SB 167 addresses only the inappropriate censorship by EED)

Section I Curriculum

Deficiency

1. A,B,C &3 The "XYZ" program is in violation of the regulation 4 AAC 33.421(c) that states:

[see Appendix A, page 2]

"XYZ" includes in their program curriculum materials that are not in compliance with AS 14.03.090. "XYZ" has banned religious curriculum from their district purchases, but believes that if the parent privately purchases the material then the course can be included in their program. Being included in their program means being incorporated in the Individual Learning Plan, work progress papers being reviewed quarterly by the assigned certified teacher, and grades for such coursework being assigned to "XYZ" transcripts. "XYZ" also uses the religious coursework to determine the 50% core coursework requirement and uses the coursework for counting FTE, as it applies to the OASIS report for funding purposes. This practice is in violation of 4 AAC 33.426 and AS 14.03.090.

... reviewed 325 current student files and his findings are below:

- 52 student files with 3 or more coursework (per file) in violation of AS 14.03.090
- 18 student files with 2 coursework (per file) in violation of AS 14.03.090
- 11 student files with 1 coursework (per file) in violation of AS 14.03.090