

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2861 SCOMM 125: HOUSE SPECIAL COMMITTEE ON EDUCATION 2001-02

Side by Side Comparison of Old and New Chapter 33 Special Schools

Old Language	November 2001 Language	April 2002 Language	Effect/Rationale
(e) The enrolling district shall prepare and enter into a separate individual cooperative agreement for each out-of-district student who is eligible for special education services.	(e) Repealed / / . [THE ENROLLING DISTRICT SHALL PREPARE AND ENTER INTO A SEPARATE INDIVIDUAL COOPERATIVE AGREEMENT FOR EACH OUT-OF-DISTRICT STUDENT WHO IS ELIGIBLE FOR SPECIAL EDUCATION SERVICES.]	(e) remains the same.	This subsection is no longer needed.
(f) Repealed 6/15/2000.	(f) Repealed 6/15/2000.	(f) remains the same.	This subsection is no longer needed.
(g) Repealed 6/15/2000.	(g) Repealed 6/15/2000.	(g) remains the same.	
(h) A student may not be counted as a total of more than 1.0 full-time equivalent for state funding purposes. If a student is enrolled in both the student's district of residence and in a statewide correspondence program of another district, the district of residence shall count the student first under the provisions of 4 AAC 09.040(c), based solely upon the student's enrollment in classes of the district of residence. Any remaining student count may be allocated to the enrolling district based on the student's enrollment in classes of the statewide correspondence study program.	(h) A student may not be counted as a total of more than 1.0 full-time equivalent for state funding purposes. If a student is enrolled in both the student's district of residence and in a statewide correspondence program of another district, the district of residence shall count the student first under the provisions of 4 AAC 09.040(c) , based solely upon the student's enrollment in classes of the district of residence. Any remaining student count may be allocated to the enrolling district based on the student's enrollment in classes of the statewide correspondence study program.	(h) remains the same.	This subsection is no longer needed.
(Eff. 5/1/99, Register 150; am	(Eff. 5/1/99, Register 150; am		

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O. ' Language	November 2001 Language	April 2002 Language	Effect/Rationale
6/15/2000, Register 154; am ____/____/____, Register ____) Authority: AS 14.07.020 ,AS14.07.030, AS 14.07.060. AS 14.08.101, AS 14.14.110,AS 14.17.430,AS 14.30.010 4 AAC 33.432. ENROLLMENT OF SPECIAL EDUCATION STUDENTS. (a) A district may enroll an out-of- district student who is entitled to special education and related services under 4 AAC 52 in the district's statewide correspondence study program, if the district enrolls each special education student through an individualized cooperative agreement with the district of residence. The cooperative agreement must provide that the district that receives the larger share of the student's full-time equivalent count for state funding purposes under 4 AAC 33.430(h) and 4 AAC 09.040(c) shall be responsible for the coordination of and payment for special education services, without respect to the cost of those services, as required by the student's individualized	6/15/2000, Register 154; am ____/____/____, Register ____) Authority: AS 14.07.020 AS 14.07.030AS 14.07.060 AS 14.08.101 AS 14.14.110 AS 14.17.430 AS 14.30.010 4 AAC 33.432 is amended and new paragraphs are added, and a new subsection is added to read: 4 AAC 33.432. ENROLLMENT OF SPECIAL EDUCATION STUDENTS. (a) <u>For a [A]district that enrolls [MAY ENROLL]</u> an out-of-district student who is entitled to special education and related services under 4 AAC 52.090 in the district's statewide correspondence study program, <u>an individualized cooperative agreement is required with the district of residence if the student is enrolling at less than 100 percent full-time-equivalent- count;</u> if the district enrolls <u>a</u> [EACH] special education student through an individualized cooperative agreement with the district of residence, [.] <u>the [THE]</u> cooperative agreement must provide that the district that receives the larger share of the student's full-time	All sections of 4 AAC 33.432 remain the same. (a) remains the same.	

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education program (IEP), and for compliance with applicable state testing and assessment requirements under 4 AAC 06.710 - 4 AAC 06.790. If the student's full-time equivalent count for each district in which the student is enrolled is equal, the cooperative agreement must provide that the student's district of residence shall be responsible for the coordination of and payment for special education services, without respect to the cost of those services, as required by the student's IEP, and for compliance with applicable state testing and assessment requirements under 4 AAC 06.710 - 4 AAC 06.790. (b) An enrolling district shall ensure that all special education students enrolled in the district's	equivalent count for state funding purposes under 4 AAC 33.430(h) and 4 AAC 09.040(c) shall be responsible for the coordination of and payment for special education services, without respect to the cost of those services, as required by the student's individualized education program (IEP), and for compliance with applicable state testing and assessment requirements under 4 AAC 06.710 - 4 AAC 06.790. If the student's full-time equivalent count for each district in which the student is enrolled is equal, the cooperative agreement must provide that the student's district of residence shall be responsible for the coordination of and payment for special education services, without respect to the cost of those services, as required by the student's IEP, and for compliance with applicable state testing and assessment requirements under 4 AAC 06.710 - 4 AAC 06.790. (b) An enrolling district shall ensure that all special education students [ENROLLED IN THE DISTRICT'S STATEWIDE CORRESPONDENCE STUDY PROGRAM] are identified and	(b) remains the same.	The new language in (a) clarifies that an individualized cooperative agreement is required with the district of residence for children with disabilities if the student is enrolling less than 100% of the time in the Statewide Correspondence Program.

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statewide correspondence study program are identified and located for the purpose of establishing their need for special education and related services. (c) An individualized cooperative agreement for each special education student must include, at a minimum, the following information: (1) the name, address, telephone number, and social security number of the student; (2) an allocation of each student's state funding calculated in accordance with the provisions of 4 AAC 33.430(h); (3) the name, address, and telephone number of the private	located for the purpose of establishing their need for special education and related services <u>and that all provisions of 4 AAC 52 are met. For a special education student enrolled in the district's statewide correspondence study program, and for whom an individualized cooperative agreement is not required under 4 AAC 33.432(a), the enrolling district shall ensure that the requirements of 4 AAC 33.432(c)(5) are met.</u> (c) <u>When an</u> [AN] individualized cooperative agreement for <u>a</u> [EACH] special education student <u>is required by (a) of this section, the agreement</u> must include, at a minimum, the following information: (1) the name, address, telephone number, and social security number of the student; (2) an allocation of each student's state funding calculated in accordance with the provisions of 4 AAC 33.430(h) ; (3) the name, address, and telephone number of the private provider or	(c) remains the same. (1) remains the same. (2) remains the same. (3) remains the same.	New language in (b) clarifies what is required for serving a special education student, including one who doesn't require an individualized cooperative agreement. The result of the proposed regulations is that districts serving correspondence students have the same requirements to meet the needs of students with disabilities as do districts serving students in site-based programs. The new, opening language in (c)

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provider or school district designated by the enrolling district to provide special education and related services to the student, if applicable, and the signature of a person authorized by the designated provider to agree to the provision of those services; (4) the plan for receipt and disbursement of funds for the benefit of a student receiving special education and related services; (5) the plan of services to be provided to the student, the identification of the members of the IEP team from each district in which the student is enrolled, if applicable under 4 AAC 52.140, and a description of the manner in which each teacher who works with the student in the enrolling district will participate as a member of the IEP team for each student; the plan and the cooperative agreement must include the identification of each student in a manner that complies with the confidentiality requirements of 4 AAC 52.220.	school district designated by the enrolling district to provide special education and related services to the student, if applicable, and the signature of a person authorized by the designated provider to agree to the provision of those services; (4) the plan for receipt and disbursement of funds for the benefit of a student receiving special education and related services; (5) the plan of services to be provided to the student, the identification of the members of the IEP team from each district in which the student is enrolled, if applicable under 4 AAC 52.140, and a description of the manner in which each teacher who works with the student in the enrolling district will participate as a member of the IEP team for each student; the plan and the cooperative agreement must include the identification of each student in a manner that complies with the confidentiality requirements of 4 AAC 52.220. (d) Repealed 6/15/2000. (e) Repealed 6/15/2000.	(4) remains the same. (5) remains the same. (d) remains the same. (e) remains the same.	is a lead in for what information must be in an individualized cooperative agreement for a child with disabilities, when an agreement is required. The required information has not changed.

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(d) Repealed 6/15/2000. (e) Repealed 6/15/2000. (f) For purposes of this section, the department will consider Alyeska Central School to be an enrolling district. Alyeska Central School shall enter into an individualized cooperative agreement with the district of residence for each student whom Alyeska Central School enrolls.	(f) For purposes of this section, the department will consider Alyeska Central School to be an enrolling district. [ALYESKA CENTRAL SCHOOL SHALL ENTER INTO AN INDIVIDUALIZED COOPERATIVE AGREEMENT WITH THE DISTRICT OF RESIDENCE FOR EACH STUDENT WHOM ALYESKA CENTRAL SCHOOL ENROLLS.] <u>(g) Students for whom the statewide correspondence program will provide a portion or all of the special education and related services may provide the services to the student prior to the individualized cooperative agreement being finalized.</u>	(f) remains the same. (g) remains the same.	(f) identifies Alyeska Central School as an enrolling district. The deletion removes the requirement for Alyeska Central School to enter into individualized cooperative agreements with the district of residence for each student enrolled.
(Eff. 5/1/99, Register 150; am 6/15/2000, Register 154) Authority: AS 14.07.020, AS 14.07.030, AS 14.07.060, AS 14.08.101, AS 14.14.110, AS 14.17.430, AS 14.30.010, AS 14.30.186	(Eff. 5/1/99, Register 150; am 6/15/2000, Register 154; am ___/___/___, Register ___) Authority: AS 14.07.020 AS 14.07.030 AS 14.07.060 AS 14.08.101 AS 14.14.110 AS 14.17.430 AS 14.30.010 AS 14.30.186		

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Old Language	November 2001 Language	April 2002 Language	Effect/Rationale
4 AAC 33.440. REPORTING REQUIREMENTS: CORRESPONDENCE AND PART-TIME STUDENTS.(a) Each enrolling district shall transmit a report containing the following information to the department along with the student count period information required by AS 14.17.600: (1) the number of out-of-district students enrolled in the district's statewide correspondence study program, by district of residence; (2) the name, address, telephone number, and social security number of each student enrolled part-time in the district's statewide correspondence study program, and the percentage of full-time equivalency assigned to that student. (b) Districts of residence shall report the following information to the department at the same time that the student count period information is required by AS	4 AAC 33.440 is amended to read 4 AAC 33.440. REPORTING REQUIREMENTS: CORRESPONDENCE AND PART-TIME STUDENTS. (a) Each enrolling district shall transmit a report containing the following information to the department along with the student count period information required by AS 14.17.600 : (1) the number of out-of-district students enrolled in the district's statewide correspondence study program, by district of residence; (2) the name, address, telephone number, and social security number of each student enrolled part-time in the district's statewide correspondence study program, and the percentage of full-time equivalency assigned to that student. (b) Districts of residence shall report the following information to the department at the same time that the student count period information is required by AS 14.17.600:	All sections of 4 AAC 33.440 remain the same. (a) remains the same. (1) remains the same. (2) remains the same. (b) remains the same.	(g) is a new subsection that allows Statewide Correspondence Programs to provide services to children with disabilities prior to an individualized cooperative agreement being finalized. This will ensure that the student is not kept waiting for educational and related services while the program paperwork is being processed and finalized.

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14.17.600: (1) the name, address, telephone number, and social security number of each student enrolled part time in the district, and the percentage of full-time equivalency assigned to that student; (2) the name of each enrolling district with which the district of residence has entered into a cooperative agreement, and the number of students covered by that cooperative agreement; (3) the amount of funds received as reimbursement or payment from each enrolling district with which the district of residence has entered into a cooperative agreement. (c) A district shall make a report required under this section in an electronic or other format, as required by the department. The department will use the reported information to ensure that no student is counted as more than one full-time equivalent. (Eff. 5/1/99, Register 150)	(1) the name, address, telephone number, and social security number of each student enrolled part time in the district, and the percentage of full-time equivalency assigned to that student; (2) the name of each enrolling district with which the district of residence has entered into a cooperative agreement [, AND THE NUMBER OF STUDENTS COVERED BY THAT COOPERATIVE AGREEMENT]; (3) the amount of funds received as reimbursement or payment from each enrolling district with which the district of residence has entered into a cooperative agreement. (c) A district shall make a report required under this section in an electronic or other format, as required by the department. The department will use the reported information to ensure that no student is counted as more than one full-time equivalent. (Eff. 5/1/99, Register 150) Authority: AS 14.07.020 AS 14.07.030 AS 14.07.060 AS	(1) remains the same. (2) remains the same. (3) remains the same. (c) remains the same.	This continues current practice. Deleted language in (2) reflects there is no need to report the number of students covered by the cooperative agreement.

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Authority: AS 14.07.020, AS 14.07.030, AS 14.07.060, AS 14.30.010	14.30.010 <u>AS 14.07.170</u> 4 AAC 33 is amended by adding a new section to read: 4 AAC 33.450. FAILURE TO PARTICIPATE IN STATE MANDATED ASSESSMENT TESTS. (a) If a student fails to participate in a state mandated assessment test the student will be ineligible for enrollment in the statewide correspondence program and denied enrollment in any other statewide correspondence program, for the following year, unless the district of enrollment has excused the student from the state mandated assessment. (Eff. __/__/__, Register __) Authority: AS 14.07.020 AS 14.07.030 AS 14.07.060 AS 14.17.430 4 AAC 33 is amended by adding a new section to read: 4 AAC 33.460. PROGRAM REVIEW. (a) The department will monitor school district statewide correspondence programs to insure	<u>4 AAC 33.450, a new section, is deleted.</u> All sections of 4 AAC 33.460 remain the same	4 AAC 33.450 is being deleted based on comments from the public. This new section establishes the program review and monitoring process the department will use for Statewide Correspondence Programs.

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	compliance with the requirements of this chapter and with assurances given upon application for program approval. (b) Upon request by the department, the district shall provide (1) a list of all students enrolled in the statewide correspondence program, including each student's name, age, entry date, exit date, whether the student has a disability category, whether the student receives intensive services, or related services; (2) a list of all administrators, teachers, teachers aides, and related services personnel who provide special education services in the district, including, for certificated staff, the teacher certificate numbers; and (3) any other information required by the department. (Eff. __/__/__, Register __) Authority: AS 14.07.020 AS 14.07.030 AS 14.07.060 AS 14.07.170AS 14.17.430 4 AAC 33.490 is amended to read		

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4 AAC 33.490. DEFINITIONS. In 4 AAC 33.410 - 4 AAC 33.490, (1) "Alyeska Central School" means the centralized correspondence study program operated by the department; (2) "board" means the state Board of Education; (3) "cooperative agreement" means a contract that is entered into by an enrolling district and a district of residence in conformance with 4 AAC 33.430 or 4 AAC 33.432; (4) "department" means the Department of Education and Early Development; (5) "district" means a city or borough school district or a regional educational attendance area; (6) "district of residence" means the school district in which a student is a resident;	4 AAC 33.490. DEFINITIONS. In 4 AAC 33.410 – 4 AAC 33.490, (1) "Alyeska Central School" means the centralized correspondence study program operated by the department; (2) "board" means the state Board of Education; (3) "cooperative agreement" means a contract that is entered into by an enrolling district and a district of residence in conformance with [4 AAC 33.430 OR] 4 AAC 33.432; (4) "department" means the Department of Education and Early Development; (5) "district" means a city or borough school district or a regional educational attendance area; (6) "district of residence" means the school district in which a student is a resident; (7) "enrolling district" means the school district that is operating an approved statewide correspondence	(1) remains the same. (2) remains the same. (3) remains the same. (4) remains the same. (5) remains the same. (6) remains the same. (7) remains the same.	Deleted language in (3) removes a regulatory citation that is incorrect.

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(7) "enrolling district" means the school district that is operating an approved statewide correspondence study program, including a program established under AS 14.03.250 - AS 14.03.290, and that seeks or intends to enroll out-of-district students in that district's program; (8) "IEP" means in individualized education program established under the provisions of 4 AAC 52.140 that meets the requirements of AS 14.30.186 and 14.30.278; (9) "out-of-district student" means a student who seeks to enroll in a district in which they do not reside; (10) "special education student" means a student who is entitled to special education and related services under AS 14.30.180 - 14.30.350 and 4 AAC 52.010 - 4 AAC 52.990; (11) "statewide correspondence study program" means any educational program, including a charter school program or a state supported home-schooling	study program, including a program established under AS 14.03.250 - AS 14.03.290 , and that seeks or intends to enroll out-of-district students in that district's program; (8) "IEP" means in individualized education program established under the provisions of 4 AAC 52.140 that meets the requirements of AS 14.30.186 and 14.30.278; (9) "out-of-district student" means a student who seeks to enroll in a district in which they do not reside; (10) "special education student" means a student who is entitled to special education and related services under AS 14.30.180 - 14.30.350 and 4 AAC 52.010 - 4 AAC 52.990; (11) "statewide correspondence study program" means any educational program, including a charter school program or a state supported home-schooling program, that provides	(8) remains the same. (9) remains the same. (10) remains the same. (11) "statewide correspondence study program" means any educational program, including a charter school program [OR A STATE SUPPORTED HOME-SCHOOLING PROGRAM], that [PROVIDES]	Wording and formatting changes are intended to clarify and do not change the intent.

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program, that provides (A) for each secondary course, less than three hours per week of scheduled face-to-face interaction, in the same location, between a teacher certificated under AS 14.20.020 and the class; (B) for elementary students, less than 15 hours per week of scheduled face-to-face interaction, in the same location, between a teacher certificated under AS 14.20.020 and each full-time equivalent elementary student. (Eff. 5/1/99, Register 150; am 6/15/2000, Register 154; am 12/2/2000, Register 156) Authority: AS 14.03.040 AS 14.07.020 AS 14.07.030 AS 14.07.060 AS 14.14.110 AS 14.17.430, AS 14.20.010 AS 14.30.010 AS 14.30.186	(A) for each secondary course, less than three hours per week of scheduled face-to-face interaction, in the same location, between a teacher certificated under AS 14.20.020 and the class; (B) for elementary students, less than 15 hours per week of scheduled face-to-face interaction, in the same location, between a teacher certificated under AS 14.20.020 and each full-time equivalent elementary student. (Eff. 5/1/99, Register 150; am 6/15/2000, Register 154; am 12/2/2000, Register 156) Authority: AS 14.03.040 AS 14.07.020 AS 14.07.030, AS 14.07.060, AS 4.14.110 AS 14.17.430, AS 14.20.010, AS 4.30.010 AS 14.30.186 Editor's note: As of Register 151 (October 1999), the regulations attorney made technical revisions under AS 44.62.125(b)(6) to reflect the	<u>(A) enrolls out-of-district students;</u> <u>(B) [(A)] provides</u> for each secondary course, less than three hours per week of scheduled face-to-face interaction, in the same location, between a teacher certificated under AS 14.20.020 and the class; <u>and</u> <u>(C) [(B)] provides</u> for elementary students, less than 15 hours per week of scheduled face-to-face interaction, in the same location, between a teacher certificated under AS 14.20.020 and each full-time equivalent elementary student. (Eff. 5/1/99, Register 150; am 6/15/2000, Register 154; am 12/2/2000, Register 156) Authority: AS 14.03.040 AS 14.07.020 AS 14.07.030, AS 14.07.060, AS 4.14.110 AS 14.17.430, AS 14.20.010, AS 4.30.010 AS 14.30.186 Editor's note: As of Register 151 (October 1999), the regulations attorney	(A) clarifies that statewide correspondence programs are those that enroll out-of-district students. (B) and (C) contain the language that was in (A) and (B) in the regulations proposed in November 2001.

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	name change of the Department of Education to the Department of Education and Early Development made by ch. 58, SLA 1999, and the corresponding title change of the commissioner of education	made technical revisions under AS 44.62.125(b)(6) to reflect the name change of the Department of Education to the Department of Education and Early Development made by ch. 58, SLA 1999, and the corresponding title change of the commissioner of education	

Public Comment
Agenda Item # 23 – Statewide Correspondence

Due to the amount of public comment received on this issue, it was shipped to the board under separate cover, and is available from the department upon request.

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CHAPTER 33. SPECIAL SCHOOLS	CHAPTER 33 SPECIAL SCHOOLS.	4 AAC 33 is amended by adding a new section to read: 4 AAC 33.405. SCOPE, FINDINGS, AND PURPOSE. (a) 4 AAC 33.405—4 AAC 33.990 apply only to district correspondence programs that enroll out-of-district students; thus, they apply to students only when a student enrolls in a public school course and do not apply to students when a student enrolls in courses from a private school, a home school under AS 14.30.010(12), or a non-public correspondence study program. (b) The Board finds that (1) district provided statewide correspondence study programs are a viable alternative to site-based public school programs (2) students enrolled in such programs are public school students; (3) the state has approximately 9,000 school age children enrolled in district run statewide correspondence programs; (4) the state expends over 30 million dollars annually supporting these programs; (5) by law district board members are only bound to provide an education to students that reside within the school district;	This new section was created in response to the comments received by the public about the proposed regulations. Opening language clarifies that these regulations apply only to district correspondence programs that enroll out-of-district students. This language also clarifies that the regulations apply to students only when the student enrolls in a public school course, and they apply only to that part of their program that is publicly funded.

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		(6) under current law, parents of out-of-district correspondence students have no statutory mechanism to affect the governance of the enrolling district; (7) there is currently no accountability for the delivery of educational services offered by district run statewide correspondence programs; and (8) some statewide correspondence students have received no academic support from their enrolling districts and as a result the quality of their education has fallen below acceptable standards. (c) The purpose of 4 AAC 33.405 — 4 AAC 33.990 is to regulate the delivery of statewide correspondence programs to assure (1) that students enrolled in statewide correspondence programs operated by public school districts receive a quality education; (2) that students meet state standards in reading, writing and math, and (3) that students obtain an education comparable to students enrolled in regular public school programs. (Eff. __/__/__, Register __) Authority: AS 14.07.020, AS 14.07.030, AS 14.07.050, AS 14.07.060, AS.14.110, AS	

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4 AAC 33.420. DEPARTMENT APPROVAL. a) A district that proposes to enroll out-of-district students in a district correspondence study program, including a correspondence study program operated by a charter school, must first file an annual application and receive written approval from the department to operate a statewide correspondence study program. (b) The department will approve a district's application if the application satisfactorily demonstrates that the district's proposed statewide correspondence study program meets the following criteria: (1) The program conforms with statewide goals and performance standards, as set out in 4 AAC 04.010 - 4 AAC 04.200;	4 AAC 33.420 is amended to read: 4 AAC 33.420. DEPARTMENT APPROVAL. (a) A district that proposes to enroll out-of-district students in a district correspondence study program, including a correspondence study program operated by a charter school, must first file an annual application and receive written approval from the department to operate a statewide correspondence study program. (b) The department will approve a district's application if the application satisfactorily demonstrates that the district's proposed statewide correspondence study program <u>complies with the requirements in 4 AAC 33.421.</u> [MEETS THE FOLLOWING CRITERIA: (1) THE PROGRAM CONFORMS WITH STATEWIDE GOALS AND PERFORMANCE STANDARDS, AS SET OUT IN 4 AAC 04.010 - 4 AAC 04.200;	14.17.430,AS14.30.010,AS 14.03.090, AS 14.08.111AS 14.14.090 4 AAC 33.420 is amended <u>and a new subsection is added</u> to read: 4 AAC 33.420. DEPARTMENT APPROVAL. a) A district that proposes to enroll out-of-district students in a district correspondence study program, including a correspondence study program operated by a charter school, must first file an <u>initial</u> [ANNUAL] application and receive written approval from the department to operate a statewide correspondence study program. (b) The department will approve a district's <u>initial</u> application if the application satisfactorily demonstrates that the district's proposed statewide correspondence study program [MEETS THE FOLLOWING CRITERIA:] <u>complies with the requirements in 4 AAC 33.421.</u>	Based on a review of the annual statewide correspondence program applications that have been submitted, the on-site program reviews conducted in 2001, and the 9/24/01 meeting in Anchorage with program representatives, it was determined that more detail and clarification related to the understandings and expectations related to statewide correspondence programs would be helpful The insertion of the word "initial" changes the application from an annual requirement to an initial requirement Subsection (b) was re-worded and refers to a new section that will more clearly line out program requirements. (b) (1)-(6) are repealed because the new section, 4 AAC 33.421 now addresses program requirements. While the proposed regulations move the requirements in 4 AAC 33.420 (b)

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(2) curriculum materials, including textbooks and other instructional aids, have been reviewed and selected by the district school board, 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; (3) the program includes an assessment plan of the same quality as an assessment plan that the district offers in the district's other programs; (4) the district requires enrolled students to participate in the statewide student assessment program as required by 4 AAC 06.710 - 4 AAC 06.790; (5) the program includes a plan for receiving parental advice and	(2) CURRICULUM MATERIALS, INCLUDING TEXTBOOKS AND OTHER INSTRUCTIONAL AIDS, HAVE BEEN REVIEWED AND SELECTED BY THE DISTRICT SCHOOL BOARD, 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 ; (3) THE PROGRAM INCLUDES AN ASSESSMENT PLAN OF THE SAME QUALITY AS AN ASSESSMENT PLAN THAT THE DISTRICT OFFERS IN THE DISTRICT'S OTHER PROGRAMS; (4) THE DISTRICT REQUIRES ENROLLED STUDENTS TO PARTICIPATE IN THE STATEWIDE STUDENT ASSESSMENT PROGRAM AS REQUIRED BY 4 AAC 06.710 - 4 AAC 06.790; (5) THE PROGRAM INCLUDES A PLAN FOR RECEIVING PARENTAL ADVICE AND INVOLVEMENT IN PLANNING,		(1)-(5) to a new section, those requirements are contained in both the current as well as the proposed regulations.

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involvement in planning, development, and evaluation of the correspondence study program, including the selection and evaluation of curriculum, teachers, and administrators; (6) the program is in the best interests of the state. History: Eff. 5/1/99, Register 150; am 6/15/2000, Register 154 Authority: AS 14.07.020, AS 14.07.030, AS 14.07.050 ,AS 14.07.060 ,AS 14.14.110, AS 14.17.430, AS 14.30.010	DEVELOPMENT, AND EVALUATION OF THE CORRESPONDENCE STUDY PROGRAM, INCLUDING] THE SELECTION AND EVALUATION OF CURRICULUM, TEACHERS, AND ADMINISTRATORS; (6) THE PROGRAM IS IN THE BEST INTERESTS OF THE STATE.] (Eff. 5/1/99, Register 150; am 6/15/2000, Register 154; am ___/___/___, Register ___) Authority: AS 14.07.020 AS 14.07.030, AS 14.07.050, AS 14.07.060, AS 14.14.110, AS 14.17.430, S 14.30.010	<u>(c) Once the initial application is approved, the district will not be required to submit a new application</u> <u>(1) more frequently than every five years if the program is designated as distinguished or successful under AS 14.03.123(a); or</u> <u>(2) more frequently than every ten years if the program is designated as distinguished or successful under AS 14.03.123(a), and the program is accredited by the Northwest Association of Schools and Colleges.</u> (Eff. 5/1/99, Register 150; am 6/15/2000, Register 154; am ___/___/___, Register ___)	(c) is a new subsection. Many of the public comments requested that program applications not be submitted annually. This new section ties the statewide correspondence programs into the state's school designation system.

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Old Language	November 2001 Language	April 2002 Language	Effect/Rationale
	4 AAC 33 is amended by adding a new section to read 4 AAC 33.421. STATEWIDE CORRESPONDENCE STUDY PROGRAM REQUIREMENTS. (a) A statewide correspondence study program offered by a district must meet the requirements of this section before its application will be approved by the department. (b) The program must conform with statewide goals and performance standards, as set out in 4 AAC 04.010 – 4 AAC 04.200; (c) The program must use curriculum materials, including textbooks and other instructional aids, that have been reviewed and selected by the district school board, 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 .	Authority: AS 14.07.020 AS 14.07.030, AS 14.07.050, AS 14.07.060, AS 14.14.110, AS 14.17.430, S 14.30.010 4 AAC 33.421. STATEWIDE CORRESPONDENCE STUDY PROGRAM REQUIREMENTS. (a) A district that proposes to offer a statewide correspondence study program must <u>demonstrate that the program</u> meets the requirements of this section before the department will approve the application. (b) remains the same. (c) remains the same.	This is the new section that more clearly lines out Statewide Correspondence Study Program requirements for those districts wishing to offer such a program. Previous language from 4 AAC 33.420 is incorporated into this new section along with new language. Items containing new language will have notations in this column. (b) was in current regulation. Its location was moved in the proposed regulations in November. (c) was in current regulation. Its location was moved in the proposed regulations in November. AS 14.07.050 requires that "textbooks... shall be selected by district boards for district

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	(d) The program staff, including certified teachers, shall not provide instruction using religious, partisan, sectarian, or denominational curricula purchased privately by the parent, guardian of the student, or by the student if the curricula teach particular religious beliefs, or a particular religion, as true. (e) To ensure the academic progress of enrolled students, the program must include an assessment plan of the same quality as an assessment plan that the district offers in the district's other programs; assessment must include: (1) monitoring of the enrolled student by a certified teacher; the monitoring must include at least	<u>(d) Certified staff shall not advocate partisan, sectarian, or denominational doctrine as part of their instruction or duties as certificated staff in the correspondence program. Nothing in this section prevents a parent from providing instruction to their child using materials of their choice, provided such material was not purchased with program funds.</u> (e) To ensure the academic progress of enrolled students, the program must include an assessment plan of the same quality as an assessment plan that the district offers in the district's other programs; <u>this assessment plan will include</u> [ASSESSMENT MUST INCLUDE]: <u>(1) assistance and approval by the district's certified contact teacher in the development of an Individual Learning Plan for each student;</u> (2) [(1)] monitoring of the enrolled student by a certified teacher; the monitoring must include at least monthly <u>teacher-student or teacher-</u>	schools.” (d) Provides clarification on the role and restrictions on certificated staff related to religious, partisan, sectarian and denominational curricula and materials. This is in compliance with AS 14.03.090. (e) was in current regulation. Its location is being moved. (1) This addition was recommended in public comment.

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	monthly review of the student's work and documentation of the certified teacher's review; (2) grades, or standards met, determined and assigned by a certified teacher, after review and consideration of any recommendations submitted by the student and parents; (3) a transcript that denotes curricula material origin for any course other than a district developed course. (f) The district must require enrolled students to participate in the statewide student assessment program as required by 4 AAC	<u>parent contact, and quarterly</u> review of the student's work <u>or progress in the Individual Learning Plan; the district will maintain a record of this contact</u> [AND DOCUMENTATION OF THE CERTIFIED TEACHER'S REVIEW]; (3) [(2)] grades, or standards met, determined and assigned by a certified teacher, after review and consideration of any recommendations submitted by the student and parents; (4) [(3)] a transcript that denotes curricula <u>or</u> material origin for any non-district course (f) remains the same.	(2) addresses certified teacher requirements related to reviewing student work. Change is in response to responses received in public comment. The monthly contact requirement is analogous to the requirement for attendance at least once every 10 days in site based school. The quarterly review of work or progress is analogous to standard report card / progress requirements. The monthly contact may be as brief or as detailed as appropriate or needed for the particular student. (3) addresses required grading by the certified teacher. (4) Identification of curriculum and material source are required only for those courses that are NOT district-developed courses. This allows for the identification, inclusion and granting of credit for non-district developed courses. This is consistent with standard practice for districts and accredited schools that accept and award credit for courses or learning

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	06.710 - 4 AAC 06.790; the program must (1) have staff inform parents of state testing requirements and the consequences of non-compliance under 4 AAC 33.450; and (2) provide a secure testing facility pursuant to 4 AAC 06.765 to administer all state mandated assessment tests; or enter into agreements with local school districts and those site-based schools to allow statewide correspondence program students to participate in state required testing; (3) have available to the department, data documenting student participation rates in state required assessments within 10% points of the state average for the prior year's spring test administration. (g) The program must include a plan for receiving parental advice and involvement in planning, development, and evaluation of the correspondence study program, including the selection and	<u>(1) require parents to sign an affidavit indicating that they understand the state testing requirements and that they will abide by them; and</u> (2) remains the same. [(3) HAVE AVAILABLE TO THE DEPARTMENT, DATA DOCUMENTING STUDENT PARTICIPATION RATES IN STATE REQUIRED ASSESSMENTS WITHIN 10% POINTS OF THE STATE AVERAGE FOR THE PRIOR YEAR'S SPRING TEST ADMINISTRATION.] (g) remains the same.	acquired from other than district sources. (f)(1) and (2) provide new language related to student participation in state mandated assessments and the responsibility the district has for maintaining student participation rates in state mandated assessments. This is consistent with requirements in all public schools in the state and with the requirements for secure and comparable testing facilities and procedures. New language in (1) is from recommendations received in public comment. (3) is being deleted based on comments from the public.

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	evaluation of curriculum, teachers, and administrators; the plan must include a signed agreement between the statewide correspondence program certified teacher and the parent, or parents, of each student; the agreement (1) must verify that the curriculum materials and course of study are aligned to state standards and comply with AS 14.03.090, and appropriate for the student; (2) must document the process used to ensure curriculum materials are aligned to state standards and in compliance with AS 14.03.090, including a certified teacher review of all curriculum materials for each student. (h) A statewide correspondence program may provide a fund account to parents for the purpose of meeting instructional expenses for the child enrolled in the program; the following requirements apply to the fund account: (1) expenditures from statewide correspondence fund accounts must	(1) must verify that the curriculum materials and course of study are appropriate for the student, aligned to state standards, and comply with AS 14.03.090, and [APPROPRIATE FOR THE STUDENT;] (2) remains the same. (h) remains the same. (1) expenditures from [STATEWIDE CORRESPONDENCE] fund accounts	(g)(1) through (6) provide clear guidance to Statewide Correspondence Programs on the use of parent/student fund accounts. New wording reflects clarification based on public comment letters. The requirement for materials to be aligned to state standards is contained in current regulation. (h) clarifies that the fund account

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	be for the student's instructional needs only; (2) materials purchased with state funding are property of the program; non consumable materials must be returned to the program when the student exits the program for any reason; (3) religious, partisan, sectarian, or denominational materials may not be purchased with account funds; (4) the program must provide written guidance, consistent with this chapter, on what constitutes appropriate and allowable expenditures of the fund accounts; (5) all expenditures from the fund account must be approved by the certified teacher signing the student's plan; and	must be for the student's instructional needs; [ONLY] <u>as referenced on the learning plan agreed upon by the parents and the district certified contact teacher;</u> (2) materials purchased with state <u>funds</u> [FUNDING] are property of the program; non consumable materials must be returned to the program when the student exits the program for any reason; (3) religious, partisan, sectarian, or denominational materials may not be purchased with account funds; <u>nothing in this paragraph, or section, prevents a parent, or child, from purchasing such materials with their own money;</u> (4) the program must provide written guidance, consistent with this chapter, on what constitutes appropriate and allowable expenditures of the fund accounts; <u>the district must include this policy with its application;</u> (5) all expenditures from the fund account must be approved by the <u>district according to a written process established by the district;</u>	must be used for instructional expenses for the child enrolled in the program. Deleted words weren't needed. Wording added is from recommendations received in public comment. Word change does not change intent. New wording in (3) reflects clarification sought in public comment letters on the issue of purchasing curricula or materials with personal, family funds. New wording in (4) reflects clarification on what is to be included in the program

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4 AAC 33.425. APPLICATIONS. (a) A district application for department approval of a statewide correspondence study program must be received by the department on or before the January 1 preceding the school year in which the program is to be initiated. (b) The department will review each application and issue a written approval or denial of the application before the July 1 preceding the school year in which the program is to be initiated. (Eff. 5/1/99, Register 150) Authority: AS 14.07.020,AS	(6) the fund account may not be used either by the district or the parent to supplant district funds or obligations for IEP services. (Eff. __/__/__, Register __) Authority: AS 14.07.020 AS 14.07.030 AS 14.07.050 AS 14.07.060 AS 14.14.110 AS 14.17.430AS 14.30.010, AS 14.03.090AS 14.08.111AS 14.14 .090 4 AAC 33.425 APPLICATIONS This remains the same.	<u>the district's process may include pre-authorization for items identified by the district in its written process</u> [CERTIFIED TEACHER SIGNING THE STUDENT'S PLAN]; and (6) Remains the same. 4 AAC 33.425 Repealed;	application. New wording in (5) reflects changes sought in public comment letters. Many letters stated that requiring the certified teacher to sign off on purchases would be too burdensome. (6) clarifies existing federal restrictions and requirements regarding district obligations related to IDEA / IEP plans and services.

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14.07.030, AS 14.07.060 ,AS 14.17.430, AS 14.30.010 4 AAC 33.430. ENROLLMENT OF OUT-OF-DISTRICT STUDENTS. (a) Before enrolling an out-of-district student in a statewide correspondence study program, a district shall enter into a cooperative agreement with the student's district of residence. (b) Repealed 6/15/2000. (c) For the purposes of this	4 AAC 33.430 is amended to read: 4 AAC 33.430. ENROLLMENT OF OUT-OF-DISTRICT STUDENTS. (a) <u>To enroll out-of-district students in a statewide correspondence program, the enrolling district must provide to the department a report listing enrolled students and the percentage of time they are enrolled to the district</u> [BEFORE ENROLLING AN OUT-OF-DISTRICT STUDENT IN A STATEWIDE CORRESPONDENCE STUDY PROGRAM, A DISTRICT SHALL ENTER INTO A COOPERATIVE AGREEMENT WITH THE STUDENT'S DISTRICT OF RESIDENCE,] <u>either before enrolling an out-of-district student in a statewide correspondence study program, or by the time that the student count period information is required by AS 14.17.600.</u> (b) Repealed 6/15/2000. (c) For the purposes of this section, the department will consider	All sections of 4 AAC 33.430 remain the same. (b) remains the same. (c) remains the same.	Requirements of the program application are located in other sections of these regulations; therefore, this section was no longer needed. The amended proposed regulations change the timeframe for the application to a five-year timeframe versus an annual process. The revised language in (a) streamlines the enrollment process and removes the burdensome cooperative agreement process as it relates to Statewide Correspondence Programs.

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section, the department will consider Alyeska Central School to be an enrolling district. Alyeska Central School shall enter into a cooperative agreement with the district of residence to cover all students from that district whom Alyeska Central School enrolls. This section does not apply to students who enroll in Alyeska Summer School Program. (d) Cooperative agreements must include, at a minimum, the following information and provisions: (1) the names, addresses, telephone numbers, and social security numbers of out-of-district students enrolled in the statewide correspondence study program; (2) an allocation of each student's state funding allocation.	Alyeska Central School to be an enrolling district. [ALYESKA CENTRAL SCHOOL SHALL ENTER INTO A COOPERATIVE AGREEMENT WITH THE DISTRICT OF RESIDENCE TO COVER ALL STUDENTS FROM THAT DISTRICT WHOM ALYESKA CENTRAL SCHOOL ENROLLS.] This section does not apply to students who enroll in Alyeska Summer School Program. (d) Repealed / / . [COOPERATIVE AGREEMENTS MUST INCLUDE, AT A MINIMUM, THE FOLLOWING INFORMATION AND PROVISIONS: (1) THE NAMES, ADDRESSES, SOCIAL SECURITY NUMBERS OF OUT-OF-DISTRICT STUDENTS ENROLLED IN THE STATEWIDE CORRESPONDENCE STUDY PROGRAM; (2) AN ALLOCATION OF EACH STUDENT'S STATE FUNDING ALLOCATION.]	(d) remains the same. (1) remains the same. (2) remains the same.	Deleted language in (c) removes the cooperative agreement language as it related to Alyeska Central School. This subsection is no longer needed.

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(e) The enrolling district shall prepare and enter into a separate individual cooperative agreement for each out-of-district student who is eligible for special education services.	(e) Repealed / / . [THE ENROLLING DISTRICT SHALL PREPARE AND ENTER INTO A SEPARATE INDIVIDUAL COOPERATIVE AGREEMENT FOR EACH OUT-OF-DISTRICT STUDENT WHO IS ELIGIBLE FOR SPECIAL EDUCATION SERVICES.]	(e) remains the same.	This subsection is no longer needed.
(f) Repealed 6/15/2000.	(f) Repealed 6/15/2000.	(f) remains the same.	
(g) Repealed 6/15/2000.	(g) Repealed 6/15/2000.	(g) remains the same.	This subsection is no longer needed.
(h) A student may not be counted as a total of more than 1.0 full-time equivalent for state funding purposes. If a student is enrolled in both the student's district of residence and in a statewide correspondence program of another district, the district of residence shall count the student first under the provisions of 4 AAC 09.040(c), based solely upon the student's enrollment in classes of the district of residence. Any remaining student count may be allocated to the enrolling district based on the student's enrollment in classes of the statewide correspondence study program.	(h) A student may not be counted as a total of more than 1.0 full-time equivalent for state funding purposes. If a student is enrolled in both the student's district of residence and in a statewide correspondence program of another district, the district of residence shall count the student first under the provisions of 4 AAC 09.040(c) , based solely upon the student's enrollment in classes of the district of residence. Any remaining student count may be allocated to the enrolling district based on the student's enrollment in classes of the statewide correspondence study program.	(h) remains the same.	This subsection is no longer needed.
(Eff. 5/1/99, Register 150; am	(Eff. 5/1/99, Register 150; am		

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6/15/2000, Register 154; am ___/___/___, Register ___) Authority: AS 14.07.020 ,AS14.07.030, AS 14.07.060, AS 14.08.101, AS 14.14.110,AS 14.17.430,AS 14.30.010 4 AAC 33.432. ENROLLMENT OF SPECIAL EDUCATION STUDENTS. (a) A district may enroll an out-of-district student who is entitled to special education and related services under 4 AAC 52 in the district's statewide correspondence study program, if the district enrolls each special education student through an individualized cooperative agreement with the district of residence. The cooperative agreement must provide that the district that receives the larger share of the student's full-time equivalent count for state funding purposes under 4 AAC 33.430(h) and 4 AAC 09.040(c) shall be responsible for the coordination of and payment for special education services, without respect to the cost of those services, as required by the student's individualized	6/15/2000, Register 154; am ___/___/___, Register ___) Authority: AS 14.07.020 AS 14.07.030AS 14.07.060 AS 14.08.101 AS 14.14.110 AS 14.17.430 AS 14.30.010 4 AAC 33.432 is amended and new paragraphs are added, and a new subsection is added to read: 4 AAC 33.432. ENROLLMENT OF SPECIAL EDUCATION STUDENTS. (a) <u>For a [A]district that enrolls [MAY ENROLL]</u> an out-of-district student who is entitled to special education and related services under 4 AAC 52.<u>090</u> in the district's statewide correspondence study program, <u>an individualized cooperative agreement is required with the district of residence if the student is enrolling at less than 100 percent full-time-equivalent-count;</u> if the district enrolls <u>a</u> [EACH] special education student through an individualized cooperative agreement with the district of residence, <u>[.] the [THE]</u> cooperative agreement must provide that the district that receives the larger share of the student's full-time	All sections of 4 AAC 33.432 remain the same. (a) remains the same.	

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education program (IEP), and for compliance with applicable state testing and assessment requirements under 4 AAC 06.710 - 4 AAC 06.790. If the student's full-time equivalent count for each district in which the student is enrolled is equal, the cooperative agreement must provide that the student's district of residence shall be responsible for the coordination of and payment for special education services, without respect to the cost of those services, as required by the student's IEP, and for compliance with applicable state testing and assessment requirements under 4 AAC 06.710 - 4 AAC 06.790. (b) An enrolling district shall ensure that all special education students enrolled in the district's	equivalent count for state funding purposes under 4 AAC 33.430(h) and 4 AAC 09.040(c) shall be responsible for the coordination of and payment for special education services, without respect to the cost of those services, as required by the student's individualized education program (IEP), and for compliance with applicable state testing and assessment requirements under 4 AAC 06.710 - 4 AAC 06.790. If the student's full-time equivalent count for each district in which the student is enrolled is equal, the cooperative agreement must provide that the student's district of residence shall be responsible for the coordination of and payment for special education services, without respect to the cost of those services, as required by the student's IEP, and for compliance with applicable state testing and assessment requirements under 4 AAC 06.710 - 4 AAC 06.790. (b) An enrolling district shall ensure that all special education students [ENROLLED IN THE DISTRICT'S STATEWIDE CORRESPONDENCE STUDY PROGRAM] are identified and	(b) remains the same.	The new language in (a) clarifies that an individualized cooperative agreement is required with the district of residence for children with disabilities if the student is enrolling less than 100% of the time in the Statewide Correspondence Program.

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statewide correspondence study program are identified and located for the purpose of establishing their need for special education and related services.	located for the purpose of establishing their need for special education and related services <u>and that all provisions of 4 AAC 52 are met. For a special education student enrolled in the district's statewide correspondence study program, and for whom an individualized cooperative agreement is not required under 4 AAC 33.432(a), the enrolling district shall ensure that the requirements of 4 AAC 33.432(c)(5) are met.</u>		
(c) An individualized cooperative agreement for each special education student must include, at a minimum, the following information:	(c) <u>When an</u> [AN] individualized cooperative agreement for <u>a</u> [EACH] special education student <u>is required by (a) of this section, the agreement</u> must include, at a minimum, the following information:	(c) remains the same.	
(1) the name, address, telephone number, and social security number of the student;	(1) the name, address, telephone number, and social security number of the student;	(1) remains the same.	
(2) an allocation of each student's state funding calculated in accordance with the provisions of 4 AAC 33.430(h);	(2) an allocation of each student's state funding calculated in accordance with the provisions of 4 AAC 33.430(h) ;	(2) remains the same.	
(3) the name, address, and telephone number of the private	(3) the name, address, and telephone number of the private provider or	(3) remains the same.	New language in (b) clarifies what is required for serving a special education student, including one who doesn't require an individualized cooperative agreement. The result of the proposed regulations is that districts serving correspondence students have the same requirements to meet the needs of students with disabilities as do districts serving students in site-based programs. The new, opening language in (c)

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provider or school district designated by the enrolling district to provide special education and related services to the student, if applicable, and the signature of a person authorized by the designated provider to agree to the provision of those services; (4) the plan for receipt and disbursement of funds for the benefit of a student receiving special education and related services; (5) the plan of services to be provided to the student, the identification of the members of the IEP team from each district in which the student is enrolled, if applicable under 4 AAC 52.140, and a description of the manner in which each teacher who works with the student in the enrolling district will participate as a member of the IEP team for each student; the plan and the cooperative agreement must include the identification of each student in a manner that complies with the confidentiality requirements of 4 AAC 52.220.	school district designated by the enrolling district to provide special education and related services to the student, if applicable, and the signature of a person authorized by the designated provider to agree to the provision of those services; (4) the plan for receipt and disbursement of funds for the benefit of a student receiving special education and related services; (5) the plan of services to be provided to the student, the identification of the members of the IEP team from each district in which the student is enrolled, if applicable under 4 AAC 52.140, and a description of the manner in which each teacher who works with the student in the enrolling district will participate as a member of the IEP team for each student; the plan and the cooperative agreement must include the identification of each student in a manner that complies with the confidentiality requirements of 4 AAC 52.220. (d) Repealed 6/15/2000. (e) Repealed 6/15/2000.	(4) remains the same. (5) remains the same. (d) remains the same. (e) remains the same.	is a lead in for what information must be in an individualized cooperative agreement for a child with disabilities, when an agreement is required. The required information has not changed.

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(d) Repealed 6/15/2000. (e) Repealed 6/15/2000. (f) For purposes of this section, the department will consider Alyeska Central School to be an enrolling district. Alyeska Central School shall enter into an individualized cooperative agreement with the district of residence for each student whom Alyeska Central School enrolls.	(f) For purposes of this section, the department will consider Alyeska Central School to be an enrolling district. [ALYESKA CENTRAL SCHOOL SHALL ENTER INTO AN INDIVIDUALIZED COOPERATIVE AGREEMENT WITH THE DISTRICT OF RESIDENCE FOR EACH STUDENT WHOM ALYESKA CENTRAL SCHOOL ENROLLS.] <u>(g) Students for whom the statewide correspondence program will provide a portion or all of the special education and related services may provide the services to the student prior to the individualized cooperative agreement being finalized.</u>	(f) remains the same. (g) remains the same.	(f) identifies Alyeska Central School as an enrolling district. The deletion removes the requirement for Alyeska Central School to enter into individualized cooperative agreements with the district of residence for each student enrolled.
(Eff. 5/1/99, Register 150; am 6/15/2000, Register 154) Authority: AS 14.07.020,AS 14.07.030, AS 14.07.060,AS 14.08.101,AS 14.14.110, AS 14.17.430,AS 14.30.010, AS 14.30.186	(Eff. 5/1/99, Register 150; am 6/15/2000, Register 154; am ___/___/___, Register ___) Authority: AS 14.07.020 AS 14.07.030 AS 14.07.060 AS 14.08.101 AS 14.14.110 AS 14.17.430 AS 14.30.010 AS 14.30.186		

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4 AAC 33.440. REPORTING REQUIREMENTS: CORRESPONDENCE AND PART-TIME STUDENTS.(a) Each enrolling district shall transmit a report containing the following information to the department along with the student count period information required by AS 14.17.600: (1) the number of out-of-district students enrolled in the district's statewide correspondence study program, by district of residence; (2) the name, address, telephone number, and social security number of each student enrolled part-time in the district's statewide correspondence study program, and the percentage of full-time equivalency assigned to that student. (b) Districts of residence shall report the following information to the department at the same time that the student count period information is required by AS	4 AAC 33.440 is amended to read 4 AAC 33.440. REPORTING REQUIREMENTS: CORRESPONDENCE AND PART-TIME STUDENTS. (a) Each enrolling district shall transmit a report containing the following information to the department along with the student count period information required by AS 14.17.600 : (1) the number of out-of-district students enrolled in the district's statewide correspondence study program, by district of residence; (2) the name, address, telephone number, and social security number of each student enrolled part-time in the district's statewide correspondence study program, and the percentage of full-time equivalency assigned to that student. (b) Districts of residence shall report the following information to the department at the same time that the student count period information is required by AS 14.17.600:	All sections of 4 AAC 33.440 remain the same. (a) remains the same. (1) remains the same. (2) remains the same. (b) remains the same.	(g) is a new subsection that allows Statewide Correspondence Programs to provide services to children with disabilities prior to an individualized cooperative agreement being finalized. This will ensure that the student is not kept waiting for educational and related services while the program paperwork is being processed and finalized.

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14.17.600: (1) the name, address, telephone number, and social security number of each student enrolled part time in the district, and the percentage of full-time equivalency assigned to that student; (2) the name of each enrolling district with which the district of residence has entered into a cooperative agreement, and the number of students covered by that cooperative agreement; (3) the amount of funds received as reimbursement or payment from each enrolling district with which the district of residence has entered into a cooperative agreement. (c) A district shall make a report required under this section in an electronic or other format, as required by the department. The department will use the reported information to ensure that no student is counted as more than one full-time equivalent. (Eff. 5/1/99, Register 150)	(1) the name, address, telephone number, and social security number of each student enrolled part time in the district, and the percentage of full-time equivalency assigned to that student; (2) the name of each enrolling district with which the district of residence has entered into a cooperative agreement [, AND THE NUMBER OF STUDENTS COVERED BY THAT COOPERATIVE AGREEMENT]; (3) the amount of funds received as reimbursement or payment from each enrolling district with which the district of residence has entered into a cooperative agreement. (c) A district shall make a report required under this section in an electronic or other format, as required by the department. The department will use the reported information to ensure that no student is counted as more than one full-time equivalent. (Eff. 5/1/99, Register 150) Authority: AS 14.07.020 AS 14.07.030 AS 14.07.060 AS	(1) remains the same. (2) remains the same. (3) remains the same. (c) remains the same.	This continues current practice. Deleted language in (2) reflects there is no need to report the number of students covered by the cooperative agreement.

Side by Side Comparison of Old and New Chapter 33 Special Schools

Old Language	November 2001 Language	April 2002 Language	Effect/Rationale
Authority: AS 14.07.020, AS 14.07.030, AS 14.07.060, AS 14.30.010	14.30.010 <u>AS 14.07.170</u> 4 AAC 33 is amended by adding a new section to read: 4 AAC 33.450. FAILURE TO PARTICIPATE IN STATE MANDATED ASSESSMENT TESTS. (a) If a student fails to participate in a state mandated assessment test the student will be ineligible for enrollment in the statewide correspondence program and denied enrollment in any other statewide correspondence program, for the following year, unless the district of enrollment has excused the student from the state mandated assessment. (Eff. __/__/__, Register __) Authority: AS 14.07.020 AS 14.07.030 AS 14.07.060 AS 14.17.430	<u>4 AAC 33.450, a new section, is deleted.</u>	4 AAC 33.450 is being deleted based on comments from the public.
	4 AAC 33 is amended by adding a new section to read: 4 AAC 33.460. PROGRAM REVIEW. (a) The department will monitor school district statewide correspondence programs to insure	All sections of 4 AAC 33.460 remain the same	This new section establishes the program review and monitoring process the department will use for Statewide Correspondence Programs.

Side by Side Comparison of Old and New Chapter 33 Special Schools

Old Language	November 2001 Language	April 2002 Language	Effect/Rationale
	compliance with the requirements of this chapter and with assurances given upon application for program approval. (b) Upon request by the department, the district shall provide (1) a list of all students enrolled in the statewide correspondence program, including each student's name, age, entry date, exit date, whether the student has a disability category, whether the student receives intensive services, or related services; (2) a list of all administrators, teachers, teachers aides, and related services personnel who provide special education services in the district, including, for certificated staff, the teacher certificate numbers; and (3) any other information required by the department. (Eff. __/__/__, Register __) Authority: AS 14.07.020 AS 14.07.030 AS 14.07.060 AS 14.07.170AS 14.17.430 4 AAC 33.490 is amended to read		

Side by Side Comparison of Old and New Chapter 33 Special Schools

Old Language	November 2001 Language	April 2002 Language	Effect/Rationale
4 AAC 33.490. DEFINITIONS. In 4 AAC 33.410 - 4 AAC 33.490, (1) "Alyeska Central School" means the centralized correspondence study program operated by the department; (2) "board" means the state Board of Education; (3) "cooperative agreement" means a contract that is entered into by an enrolling district and a district of residence in conformance with 4 AAC 33.430 or 4 AAC 33.432; (4) "department" means the Department of Education and Early Development; (5) "district" means a city or borough school district or a regional educational attendance area; (6) "district of residence" means the school district in which a student is a resident;	4 AAC 33.490. DEFINITIONS. In 4 AAC 33.410 – 4 AAC 33.490, (1) "Alyeska Central School" means the centralized correspondence study program operated by the department; (2) "board" means the state Board of Education; (3) "cooperative agreement" means a contract that is entered into by an enrolling district and a district of residence in conformance with [4 AAC 33.430 OR] 4 AAC 33.432; (4) "department" means the Department of Education and Early Development; (5) "district" means a city or borough school district or a regional educational attendance area; (6) "district of residence" means the school district in which a student is a resident; (7) "enrolling district" means the school district that is operating an approved statewide correspondence	(1) remains the same. (2) remains the same. (3) remains the same. (4) remains the same. (5) remains the same. (6) remains the same. (7) remains the same.	Deleted language in (3) removes a regulatory citation that is incorrect.

Side by Side Comparison of Old and New Chapter 33 Special Schools

Old Language	November 2001 Language	April 2002 Language	Effect/Rationale
(7) "enrolling district" means the school district that is operating an approved statewide correspondence study program, including a program established under AS 14.03.250 - AS 14.03.290, and that seeks or intends to enroll out-of-district students in that district's program; (8) "IEP" means in individualized education program established under the provisions of 4 AAC 52.140 that meets the requirements of AS 14.30.186 and 14.30.278; (9) "out-of-district student" means a student who seeks to enroll in a district in which they do not reside; (10) "special education student" means a student who is entitled to special education and related services under AS 14.30.180 - 14.30.350 and 4 AAC 52.010 - 4 AAC 52.990; (11) "statewide correspondence study program" means any educational program, including a charter school program or a state supported home-schooling	study program, including a program established under AS 14.03.250 - AS 14.03.290 , and that seeks or intends to enroll out-of-district students in that district's program; (8) "IEP" means in individualized education program established under the provisions of 4 AAC 52.140 that meets the requirements of AS 14.30.186 and 14.30.278; (9) "out-of-district student" means a student who seeks to enroll in a district in which they do not reside; (10) "special education student" means a student who is entitled to special education and related services under AS 14.30.180 - 14.30.350 and 4 AAC 52.010 - 4 AAC 52.990; (11) "statewide correspondence study program" means any educational program, including a charter school program or a state supported home-schooling program, that provides	(8) remains the same. (9) remains the same. (10) remains the same. (11) "statewide correspondence study program" means any educational program, including a charter school program [OR A STATE SUPPORTED HOME-SCHOOLING PROGRAM], that [PROVIDES]	Wording and formatting changes are intended to clarify and do not change the intent.

Side by Side Comparison of Old and New Chapter 33 Special Schools

Old Language	November 2001 Language	April 2002 Language	Effect/Rationale
program, that provides (A) for each secondary course, less than three hours per week of scheduled face-to-face interaction, in the same location, between a teacher certificated under AS 14.20.020 and the class; (B) for elementary students, less than 15 hours per week of scheduled face-to-face interaction, in the same location, between a teacher certificated under AS 14.20.020 and each full-time equivalent elementary student. (Eff. 5/1/99, Register 150; am 6/15/2000, Register 154; am 12/2/2000, Register 156) Authority: AS 14.03.040 AS 14.07.020 AS 14.07.030 AS 14.07.060 AS 14.14.110 AS 14.17.430, AS 14.20.010 AS 14.30.010 AS 14.30.186	(A) for each secondary course, less than three hours per week of scheduled face-to-face interaction, in the same location, between a teacher certificated under AS 14.20.020 and the class; (B) for elementary students, less than 15 hours per week of scheduled face-to-face interaction, in the same location, between a teacher certificated under AS 14.20.020 and each full-time equivalent elementary student. (Eff. 5/1/99, Register 150; am 6/15/2000, Register 154; am 12/2/2000, Register 156) Authority: AS 14.03.040 AS 14.07.020 AS 14.07.030, AS 14.07.060, AS 4.14.110 AS 14.17.430, AS 14.20.010, AS 4.30.010 AS 14.30.186 Editor's note: As of Register 151 (October 1999), the regulations attorney made technical revisions under AS 44.62.125(b)(6) to reflect the	<u>(A) enrolls out-of-district students;</u> <u>(B) [(A)] provides</u> for each secondary course, less than three hours per week of scheduled face-to-face interaction, in the same location, between a teacher certificated under AS 14.20.020 and the class; <u>and</u> <u>(C) [(B)] provides</u> for elementary students, less than 15 hours per week of scheduled face-to-face interaction, in the same location, between a teacher certificated under AS 14.20.020 and each full-time equivalent elementary student. (Eff. 5/1/99, Register 150; am 6/15/2000, Register 154; am 12/2/2000, Register 156) Authority: AS 14.03.040 AS 14.07.020 AS 14.07.030, AS 14.07.060, AS 4.14.110 AS 14.17.430, AS 14.20.010, AS 4.30.010 AS 14.30.186 Editor's note: As of Register 151 (October 1999), the regulations attorney	(A) clarifies that statewide correspondence programs are those that enroll out-of-district students. (B) and (C) contain the language that was in (A) and (B) in the regulations proposed in November 2001.

Side by Side Comparison of Old and New Chapter 33 Special Schools

Old Language	November 2001 Language	April 2002 Language	Effect/Rationale
	name change of the Department of Education to the Department of Education and Early Development made by ch. 58, SLA 1999, and the corresponding title change of the commissioner of education	made technical revisions under AS 44.62.125(b)(6) to reflect the name change of the Department of Education to the Department of Education and Early Development made by ch. 58, SLA 1999, and the corresponding title change of the commissioner of education	



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Fairbanks Daily News-Miner

State, parents OK correspondence school rules

March 21, 2002

By SEAN COCKERHAM
News-Miner Juneau Bureau

JUNEAU--State education officials, in the face of howls from parents, have revamped their plan to tighten controls on home school correspondence programs.

State officials and representatives of Interior Distance Education of Alaska, a Galena-based statewide correspondence program, told a House committee on Wednesday that they have come to a compromise on the proposed regulations.

"We have seen some of the wording and have found that all of our concerns have been addressed in the new regulations," said Carol Simpson, an IDEA parent and administrative assistant of the program.

Parents and directors of statewide correspondence programs such as IDEA and Nenana-based Cyberlynx had united in a fierce battle against the Department of Education's original draft regulations.

They objected to the possibility that religious materials could no longer be used in instruction and argued that requirements for more program oversight would be an expensive and time-consuming burden.

Parents participate in such correspondence programs through their computers as they teach their children at home. They can craft their own curriculum but certain standards must be met, like the passage of standardized tests.

North Pole Republican Rep. Jeannette James has been pushing a bill to respond to those concerns. But James said Tuesday she will bury her bill until at least April, by which time the details of the compromise regulations should be out before the public. "We're just waiting to see the proof in the pudding," James said.

The correspondence schools are state-funded, and there is no doubt public money cannot be used for religious-based educational materials, James has said. But many parents have chosen to purchase such texts themselves to use through the correspondence programs.

The Education Department's original proposed regulations appeared to dictate that no religious materials could be used, James said. In the new version, materials will not be restricted, state officials say.

Parents also objected to portions of the original draft that increased the amount of student monitoring that program officials would have to conduct and demanded that the correspondence programs go through an annual state approval process.

State education officials said the draft was the result of audits that demonstrated the need for greater

oversight of correspondence programs. The details of the new compromise regulations are to be released in about a week, and a public comment period will follow.

Education department will amend rules for home-school programs

By TIMOTHY INKLEBARGER
THE JUNEAU EMPIRE

State education officials said Wednesday that proposed regulations for statewide correspondence programs were amended after the agency received comments from concerned parents.

But the amended rules will not be available until the state Board of Education meeting on April 5-6 in Juneau, Deputy Education Commissioner Ed McLain told lawmakers on the Administrative Regulation Review Committee.

The statewide correspondence programs, run by a few school districts in Alaska, provide home-school parents with funds and equipment such as computers. About 9,000 students are enrolled in such programs.

The programs fell under scrutiny last summer when state educa-

tion officials discovered during audits of two programs that some parents were using curricula that hadn't been approved by a school board, as current rules require, and that some parents give their children final course grades.

The findings prompted the agency to propose tougher regulations for correspondence programs that enroll students out of their school district.

Some of the originally proposed rules that garnered criticism from parents and school districts included mandated monthly reviews of class work by teachers, teacher approval of all parental expenditures of public funds, and an automatic withdrawal of students from the programs if they don't participate in

Please see Schools, Page 8

Schools...

Continued from Page 1

state-mandated tests.

Parents also expressed concern that teachers wouldn't be allowed to help students who use privately purchased materials from religious publishers.

McLain said the state worked with various correspondence programs, particularly the Galena-based Interior Distance Education of Alaska, to forge new regulations that better meet the needs of correspondence students.

Carol Simpson, an administra-

tive assistant for the Galena IDEA program, told the committee that the amended guidelines adequately addressed concerns the district had with the earlier proposed regulations.

"The Department of Education has listened to the concerns that people have expressed, and they have responded to those," Simpson said. "We appreciate their response, we are supportive of the new regulations and we expect that our parents will be willing to accept them."

Some parents were still skeptical, however, without seeing the new regulations for themselves.

"I feel a little frustrated this morning because I was prepared

for something completely different and then found out that these regulations have been amended, and I can't see them," said Lynette Schmidt of Nome, who enrolls six children in the IDEA program. "I do hesitate to offer my blessing without seeing these amended plans."

Committee Chairwoman Rep. Lesil McGuire, an Anchorage Republican, said the proposed rules would be available soon and that the public would have 60 days to comment.

Timothy Inklebarger reached at timothy@juneauempire.com.

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Juneau Empire March 21, 2002

U.S. Supreme Court

BOARD OF EDUCATION v. ALLEN, 392 U.S. 236 (1968)

392 U.S. 236

BOARD OF EDUCATION OF CENTRAL SCHOOL DISTRICT NO. 1 ET AL. v.
ALLEN, COMMISSIONER OF EDUCATION OF NEW YORK, ET AL.
APPEAL FROM THE COURT OF APPEALS OF NEW YORK. No. 660.

Argued April 22, 1968.

Decided June 10, 1968.

New York's Education Law requires local public school authorities to lend textbooks free of charge to all students in grades seven to 12, including those in private schools. Appellant school boards sought a declaration that the statutory requirement was invalid as violative of the State and Federal Constitutions, an order barring appellee Commissioner of Education from removing appellants' members from office for failing to comply with it, and an order preventing the use of state funds for the purchase of textbooks to be lent to parochial students. The trial court held the law unconstitutional under the First and Fourteenth Amendments and entered summary judgment for appellants on the pleadings; the Appellate Division reversed and ordered the complaint dismissed since appellant school boards had no standing to attack the statute; and the New York Court of Appeals held that appellants did have standing but that the statute did not violate the State or Federal Constitution. The Court of Appeals said that the law was to benefit all school children, without regard to the type of school attended, that only textbooks approved by school authorities could be loaned, and therefore the statute was "completely neutral with respect to religion." Held: The statute does not violate the Establishment or the Free Exercise Clause of the First Amendment. Pp. 241-249.

(1) The express purpose of the statute was the furtherance of educational opportunities for the young, and the law merely makes available to all children the benefits of a general program to lend school books free of charge, and the financial benefit is to parents and children, not to schools. *Everson v. Board of Education*, 330 U.S. 1. Pp. 243-244.

(2) There is no evidence that religious books have been loaned, and it cannot be assumed that school authorities are unable to distinguish between secular and religious books or that they will not honestly discharge their duties to approve only secular books. Pp. 244-245. [392 U.S. 236, 237]

(3) Parochial schools, in addition to their sectarian function, perform the task of secular education, and, on the basis of this meager record, the Court cannot agree with appellants that all teaching in a sectarian school is religious or that the intertwining of secular and religious training is such that secular textbooks furnished to students are in fact instrumental in teaching religion. Pp. 245-248.

(4) In the absence of specific evidence, and based solely on judicial notice, it cannot be concluded that the statute results in unconstitutional state involvement with religious instruction or violates the Establishment Clause. P. 248.

(5) Since appellants have not shown that the law coerces them in any way in the practice of religion, there is no violation of the Free Exercise Clause. Pp. 248-249.

20 N. Y. 2d 109, 228 N. E. 2d 791, affirmed.

Marvin E. Pollock argued the cause for appellants. With him on the brief was Alan H. Levine.

Jean M. Coon, Assistant Attorney General of New York, argued the cause for appellee Allen. With her on the brief were Louis J. Lefkowitz, Attorney General, and Ruth Kessler Toch, Solicitor General. Porter R. Chandler argued the cause for appellees Rock et al. With him on the brief were William B. Ball, Richard E. Nolan, and James J. MacKrell.

Briefs of amici curiae, urging reversal, were filed by Leo Pfeffer, Arnold Forster, Edwin J. Lukas, Paul Hartman, Sol Rabkin, and Joseph B. Robison for the American Jewish Committee et al., and by Franklin C. Salisbury for Protestants and Other Americans United for Separation of Church and State.

Briefs of amici curiae, urging affirmance, were filed by Solicitor General Griswold, Assistant Attorney General Weisl, Lawrence G. Wallace, Alan S. Rosenthal, and Robert V. Zener for the United States; by Herbert F. DeSimone, Attorney General of Rhode Island, Charles G. Edwards, Assistant Attorney General, William C. Sennett, [392 U.S. 236, 238] Attorney General of Pennsylvania, James L. Oakes, Attorney General of Vermont, Robert C. Londerholm, Attorney General of Kansas, William B. Saxbe, Attorney General of Ohio, and Joe T. Patterson, Attorney General of Mississippi; by Jack P. F. Gremillion, Attorney General, for the State of Louisiana; by Boston E. Witt, Attorney General, and Myles E. Flint, Assistant Attorney General, for the State of New Mexico; by Ethan A. Hitchcock for the National Association of Independent Schools, Inc.; by R. Raber Taylor, Stuart D. Hubbell, and Herman Cahn for Citizens for Educational Freedom; by Edward C. Maguire for the New York State AFL-CIO; by Thomas J. Ford, Edward J. Walsh, Jr., and George S. Eaton for the Long Island Conference of Religious Elementary and Secondary School Administrators; by Charles M. Whelan, W. R. Consedine, Alfred L. Scanlan, and Harmon Burns for the National Catholic Educational Association et al.; by Julius Berman for the National Jewish Commission on Law and Public Affairs, and by James P. Brown for the Lutheran Church-Missouri Synod.

MR. JUSTICE WHITE delivered the opinion of the Court.

A law of the State of New York requires local public school authorities to lend textbooks free of charge to all students in grades seven through 12; students attending private schools are included. This case presents the question whether this statute is a "law respecting an establishment of religion, or prohibiting the free exercise thereof," and so in conflict with the First and Fourteenth Amendments to the Constitution, because it authorizes the loan of textbooks to students attending parochial schools. We hold that the law is not in violation of the Constitution.

Until 1965, 701 of the Education Law of the State of New York authorized public school boards to designate [392 U.S. 236, 239] textbooks for use in the public schools, to purchase such books with public funds, and to rent or sell the books to public school students. 1 In 1965 the Legislature amended 701, basing the amendments on findings that the "public welfare and safety require that the state and local communities give assistance to educational programs which are important to our national defense and the general welfare of the state." 2 Beginning with the 1966-1967 school year, local school boards were required to purchase textbooks and lend them without charge "to all children residing in such district who are enrolled in grades seven to twelve of a public or private school which complies with the compulsory education law." The books now loaned are "text-books which are designated for use in any public, elementary or secondary schools of the state or are approved by any boards of education," and which - according to a 1966 amendment - "a pupil is required to use as a text for a semester or more in a particular class in the school he legally attends." 3 [392 U.S. 236, 240]

Appellant Board of Education of Central School District No. 1 in Rensselaer and Columbia Counties, brought suit in the New York courts against appellee James Allen. 4 The complaint alleged that 701 violated both the State and Federal Constitutions; that if appellants, in reliance on their interpretation of the Constitution, failed to lend books to parochial school students within their counties appellee Allen would remove appellants from office; and that to prevent this, appellants were complying with the law and submitting to their constituents a school budget including funds for books to be lent to parochial school pupils. Appellants therefore sought a declaration that 701 was invalid, an order barring appellee Allen from removing appellants from office for failing to comply with it, and another order restraining him from apportioning state funds to school districts for the purchase of textbooks to be lent to parochial students. After answer, and upon cross-motions for summary judgment, the trial court held the law unconstitutional [392 U.S. 236, 241] under the First and Fourteenth Amendments and entered judgment for appellants. 51 Misc. 2d 297, 273 N. Y. S. 2d 239 (1966). The Appellate Division reversed, ordering the complaint dismissed on the ground that appellant school boards had no standing to attack the validity of a state statute. 27 App. Div. 2d 69, 276 N. Y. S. 2d 234 (1966). On appeal, the New York Court of Appeals concluded by a 4-3 vote that appellants did have standing 5 but by a different 4-3 vote held that 701 was not in violation of either the State or the Federal Constitution. 20 N. Y. 2d 109, 228 N. E. 2d 791, 281 N. Y. S. 2d 799 (1967). The Court of Appeals said that the law's purpose was to benefit all school children, regardless of the type of school they attended, and that only textbooks approved by public school authorities could be loaned. It therefore considered 701 "completely neutral with respect to religion, merely making available secular textbooks at the request of the individual student and asking no question about what school he attends." Section 701, the Court of Appeals concluded, is not a law which "establishes a religion or constitutes the use of public funds to aid religious schools." 20 N. Y. 2d, at 117; 228 N. E. 2d, at 794, 795; 281 N. Y. S. 2d, at 805. We noted probable jurisdiction. 389 U.S. 1031 (1968).

Everson v. Board of Education, 330 U.S. 1 (1947), is the case decided by this Court that is most nearly in [392 U.S. 236, 242] point for today's problem. New Jersey reimbursed parents for expenses incurred in busing their children to parochial schools. The Court stated that the Establishment Clause bars a State from passing "laws which aid one religion, aid all religions, or

prefer one religion over another," and bars too any "tax in any amount, large or small . . . levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion." 330 U.S., at 15 -16. Nevertheless, said the Court, the Establishment Clause does not prevent a State from extending the benefits of state laws to all citizens without regard for their religious affiliation and does not prohibit "New Jersey from spending tax-raised funds to pay the bus fares of parochial school pupils as a part of a general program under which it pays the fares of pupils attending public and other schools." The statute was held to be valid even though one of its results was that "children are helped to get to church schools" and "some of the children might not be sent to the church schools if the parents were compelled to pay their children's bus fares out of their own pockets." 330 U.S., at 17

. As with public provision of police and fire protection, sewage facilities, and streets and sidewalks, payment of bus fares was of some value to the religious school, but was nevertheless not such support of a religious institution as to be a prohibited establishment of religion within the meaning of the First Amendment.

Everson and later cases have shown that the line between state neutrality to religion and state support of religion is not easy to locate. "The constitutional standard is the separation of Church and State. The problem, like many problems in constitutional law, is one of degree." *Zorach v. Clauson*, 343 U.S. 306, 314 (1952). See *McGowan v. Maryland*, 366 U.S. 420 (1961). Based [392 U.S. 236, 243] on *Everson*, *Zorach*, *McGowan*, and other cases, *Abington School District v. Schempp*, 374

U.S. 203 (1963), fashioned a test subscribed to by eight Justices for distinguishing between forbidden involvements of the State with religion and those contacts which the Establishment Clause permits:

"The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion. *Everson v. Board of Education*. . . ." 374 U.S., at 222 .

This test is not easy to apply, but the citation of *Everson* by the *Schempp* Court to support its general standard made clear how the *Schempp* rule would be applied to the facts of *Everson*. The statute upheld in *Everson* would be considered a law having "a secular legislative purpose and a primary effect that neither advances nor inhibits religion." We reach the same result with respect to the New York law requiring school books to be loaned free of charge to all students in specified grades. The express purpose of 701 was stated by the New York Legislature to be furtherance of the educational opportunities available to the young. Appellants have shown us nothing about the necessary effects of the statute that is contrary to its stated purpose. The law merely makes available to all children the benefits of a general program to lend school books free of charge. Books are furnished at the request of the pupil and ownership remains, at least technically, in the State. Thus no funds or books are furnished [392 U.S. 236, 244] to parochial schools, and the financial benefit is to parents and children, not to schools. 6 Perhaps free books make it more likely that some children choose to attend a sectarian school, but that was true of

the state-paid bus fares in *Everson* and does not alone demonstrate an unconstitutional degree of support for a religious institution.

Of course books are different from buses. Most bus rides have no inherent religious significance, while religious books are common. However, the language of 701 does not authorize the loan of religious books, and the State claims no right to distribute religious literature. Although the books loaned are those required by the parochial school for use in specific courses, each book [392 U.S. 236, 245] loaned must be approved by the public school authorities; only secular books may receive approval. The law was construed by the Court of Appeals of New York as "merely making available secular textbooks at the request of the individual student," *supra*, and the record contains no suggestion that religious books have been loaned. Absent evidence, we cannot assume that school authorities, who constantly face the same problem in selecting textbooks for use in the public schools, are unable to distinguish between secular and religious books or that they will not honestly discharge their duties under the law. In judging the validity of the statute on this record we must proceed on the assumption that books loaned to students are books that are not unsuitable for use in the public schools because of religious content.

The major reason offered by appellants for distinguishing free textbooks from free bus fares is that books, but not buses, are critical to the teaching process, and in a sectarian school that process is employed to teach religion. However this Court has long recognized that religious schools pursue two goals, religious instruction and secular education. In the leading case of *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), the Court held that although it would not question Oregon's power to compel school attendance or require that the attendance be at an institution meeting State-imposed requirements as to quality and nature of curriculum, Oregon had not shown that its interest in secular education required that all children attend publicly operated schools. A premise of this holding was the view that the State's interest in education would be served sufficiently by reliance on the secular teaching that accompanied religious training in the schools maintained by the Society of Sisters. Since *Pierce*, a substantial body of case law has confirmed the power of the States to insist that attendance at private schools, if it is to satisfy state compulsory-attendance [392 U.S. 236, 246] laws, be at institutions which provide minimum hours of instruction, employ teachers of specified training, and cover prescribed subjects of instruction. 7 Indeed, the State's interest in assuring that these standards are being met has been considered a sufficient reason for refusing to accept instruction at home as compliance with compulsory [392 U.S. 236, 247] education statutes. 8 These cases were a sensible corollary of *Pierce v. Society of Sisters*: if the State must satisfy its interest in secular education through the instrument of private schools, it has a proper interest in the manner in which those schools perform their secular educational function. Another corollary was *Cochran v. Louisiana State Board of Education*, 281 U.S. 370 (1930), where appellants said that a statute requiring school books to be furnished without charge to all students, whether they attended public or private schools, did not serve a "public purpose," and so offended the Fourteenth Amendment. Speaking through Chief Justice Hughes, the Court summarized as follows its conclusion that Louisiana's interest in the secular education being provided by private schools made provision of textbooks to students in those schools a properly public concern: "[The State's] interest is education, broadly; its method, comprehensive. Individual interests are aided only as the common interest is safeguarded." 281 U.S., at 375 .

Underlying these cases, and underlying also the legislative judgments that have preceded the court decisions, has been a recognition that private education has played and is playing a significant and valuable role in raising national levels of knowledge, competence, and experience. Americans care about the quality of the secular education available to their children. They have considered high quality education to be an indispensable ingredient for achieving the kind of nation, and the kind of citizenry, that they have desired to create. Considering this attitude, the continued willingness to rely on private school systems, including parochial systems, strongly suggests [392 U.S. 236, 248] that a wide segment of informed opinion, legislative and otherwise, has found that those schools do an acceptable job of providing secular education to their students. 9 This judgment is further evidence that parochial schools are performing, in addition to their sectarian function, the task of secular education.

Against this background of judgment and experience, unchallenged in the meager record before us in this case, we cannot agree with appellants either that all teaching in a sectarian school is religious or that the processes of secular and religious training are so intertwined that secular textbooks furnished to students by the public are in fact instrumental in the teaching of religion. This case comes to us after summary judgment entered on the pleadings. Nothing in this record supports the proposition that all textbooks, whether they deal with mathematics, physics, foreign languages, history, or literature, are used by the parochial schools to teach religion. No evidence has been offered about particular schools, particular courses, particular teachers, or particular books. We are unable to hold, based solely on judicial notice, that this statute results in unconstitutional involvement of the State with religious instruction or that 701, for this or the other reasons urged, is a law respecting the establishment of religion within the meaning of the First Amendment.

Appellants also contend that 701 offends the Free Exercise Clause of the First Amendment. However, "it is necessary in a free exercise case for one to show the [392 U.S. 236, 249] coercive effect of the enactment as it operates against him in the practice of his religion," *Abington School District v. Schempp*, 374 U.S. 203, 223 (1963), and appellants have not contended that the New York law in any way coerces them as individuals in the practice of their religion.

The judgment is affirmed.

Footnotes

[Footnote 1] New York Sess. Laws 1950, c. 239, 1. New York Education Law 703, New York Sess. Laws 1950, c. 239, 3, permitted the qualified voters of any school district to authorize a special tax for the purpose of making available free textbooks. The 1965 amendments that required free textbooks to be provided for grades seven through 12 amended 703 so that it now permits local voters to approve free books for grades one through six.

[Footnote 2] New York Sess. Laws 1965, c. 320, 1.

[Footnote 3] New York Education Law 701 (1967 Supp.):

"1. In the several cities and school districts of the state, boards of education, trustees or such body or officer as perform the functions of such boards, shall designate text-books to be used in the schools under their charge.

"2. A text-book, for the purposes of this section shall mean a book which a pupil is required to use as a text for a semester or more in a particular class in the school he legally attends.

"3. In the several cities and school districts of the state, boards of education, trustees or such body or officers as perform the function of such boards shall have the power and duty to purchase and [392 U.S. 236, 240] to loan upon individual request, to all children residing in such district who are enrolled in grades seven to twelve of a public or private school which complies with the compulsory education law, text-books. Text-books loaned to children enrolled in grades seven to twelve of said private schools shall be text-books which are designated for use in any public, elementary or secondary schools of the state or are approved by any boards of education, trustees or other school authorities. Such text-books are to be loaned free to such children subject to such rules and regulations as are or may be prescribed by the board of regents and such boards of education, trustees or other school authorities."

The present subdivision 2 was added by amendment in 1966, New York Sess. Laws 1966, c. 795. This suit was filed, and the trial court opinion was rendered, prior to the 1966 amendment.

[Footnote 4] Intervention was permitted on plaintiffs' side by the Board of Education of Union Free School District No. 3 in Nassau County, which appears here as co-appellant, and on defendants' side by parents of certain students attending private schools, who appear here as co-appellees.

[Footnote 5] Appellees do not challenge the standing of appellants to press their claim in this Court. Appellants have taken an oath to support the United States Constitution. Believing 701 to be unconstitutional, they are in the position of having to choose between violating their oath and taking a step - refusal to comply with 701 - that would be likely to bring their expulsion from office and also a reduction in state funds for their school districts. There can be no doubt that appellants thus have a "personal stake in the outcome" of this litigation. *Baker v. Carr*, 369 U.S. 186, 204 (1962).

[Footnote 6] While the record and the state court opinions in this case contained no information about how the books are in fact transferred from the Boards of Education to individual students, both parties suggested in their briefs and on oral argument before this Court that New York permits private schools to submit to boards of education summaries of the requests for textbooks filed by individual students, and also permits private schools to store on their premises the textbooks being loaned by the Board of Education to the students. This interpretation of the State's administrative procedure is supported by an "Opinion of Counsel" made available by the Board of Regents and the State Department of Education to local school superintendents. For purposes of this case we consider the New York statute to permit these procedures. So construing the statute, we find it in conformity with the Constitution, for the books are furnished for the use of individual students and at their request.

It should be noted that the record contains no evidence that any of the private schools in appellants' districts previously provided textbooks for their students. There is some evidence that at least some of the schools did not: intervenor defendants asserted that they had previously purchased all their children's textbooks. And see statement of then Commissioner of Education Keppel: "Non-public schools rarely provide free textbooks." *Hearings on Elementary and Secondary Education Act of 1965 before General Subcommittee on Education of House Committee on Education and Labor, 89th Cong., 1st Sess., Pt. 1, 93 (1965).*

[Footnote 7] This Court has twice suggested the constitutionality of these state regulations. "[T]he State may 'require teaching by instruction and study of all in our history and in the structure and organization of our government, including the guaranties of civil liberty, which tend to inspire patriotism and love of country.'" *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 631 (1943), quoting *Minersville School District v. Gobitis*, 310 U.S. 586, 604 (1940) (Stone, J., dissenting). "This Court has said that parents may, in the discharge of their duty under state compulsory education laws, send their children to a religious rather than a public school if the school meets the secular educational requirements which the state has power to impose." *Everson v. Board of Education*, 330 U.S. 1, 18 (1947) (citing *Pierce v. Society of Sisters*). A great many state cases have upheld a wide range of private school regulation. E. g., *Meyerkorth v. State*, 173 Neb. 889, 115 N. W. 2d 585 (1962), appeal dismissed for want of a substantial federal question, 372 U.S. 705 (1963); *State v. Hoyt*, 84 N. H. 38, 146 A. 170 (1929); *People v. Donner*, 199 Misc. 643, 99 N. Y. S. 2d 830 (Dom. Rel. Ct. 1950), *aff'd mem.*, 278 App. Div. 705, 103 N. Y. S. 2d 757, *aff'd mem.*, 302 N. Y. 857, 100 N. E. 2d 48, appeal dismissed for want of a substantial federal question, 342 U.S. 884 (1951).

New York State regulates private schools extensively, especially as to attendance and curriculum. New York Education Law 3201-3229 (1953). Regents examinations are given to private school students. *Id.*, 209. The basic requirement is that the instruction given in private schools satisfying the compulsory attendance law be "at least substantially equivalent to the instruction given to minors of like age and attainments at the public schools of the city or district where the minor resides." *Id.*, 3204 subd. 2.

New York requires school attendance of "each minor from seven to sixteen years of age" unless he has completed high school. *Id.*, 3205.

[Footnote 8] E. g., *People v. Turner*, 121 Cal. App. 2d 861, 263 P.2d 685 (1953), appeal dismissed for want of a substantial federal question, 347 U.S. 972 (1954).

[Footnote 9] In 1965-1966 in New York State, over 900,000 students, or 22.2% of total state enrollment, attended nonpublic schools. University of State of New York, Education Statistics Estimates 1966-67, Table I (1966). The comparable statistic for the Nation was at least 10%. United States Bureau of the Census, Statistical Abstract of the United States: 1967, at 111 (1967).

MR. JUSTICE HARLAN, concurring.

Although I join the opinion and judgment of the Court, I wish to emphasize certain of the principles which I believe to be central to the determination of this case, and which I think are implicit in the Court's decision.

The attitude of government toward religion must, as this Court has frequently observed, be one of neutrality. Neutrality is, however, a coat of many colors. It requires that "government neither engage in nor compel religious practices, that it effect no favoritism among sects or between religion and nonreligion, and that it work deterrence of no religious belief." *Abington School District v. Schempp*, 374 U.S. 203, 305 (concurring opinion of Goldberg, J.). Realization of these objectives entails "no simple and clear measure," *id.*, at 306, by which this or any case may readily be decided, but these objectives do suggest the principles which I believe to be applicable in the present circumstances. I would hold that where the contested governmental activity is calculated to achieve nonreligious purposes otherwise within the competence of the State, and where the activity does not involve the State "so significantly and directly in the realm of the sectarian as to give rise to . . . divisive influences and inhibitions of freedom," *id.*, at 307, it is not forbidden by the religious clauses of the First Amendment. [392 U.S. 236, 250]

In my opinion, 701 of the Education Law of New York does not employ religion as its standard for action or inaction, and is not otherwise inconsistent with these principles.

MR. JUSTICE BLACK, dissenting.

The Court here affirms a judgment of the New York Court of Appeals which sustained the constitutionality of a New York law providing state tax-raised funds to supply school books for use by pupils in schools owned and operated by religious sects. I believe the New York law held valid is a flat, flagrant, open violation of the First and Fourteenth Amendments which together forbid Congress or state legislatures to enact any law "respecting an establishment of religion." For that reason I would reverse the New York Court of Appeals' judgment. This, I am confident, would be in keeping with the deliberate statement we made in *Everson v. Board of Education*, 330 U.S. 1, 15 -16 (1947), and repeated in *McCullum v. Board of Education*, 333 U.S. 203, 210 - 211 (1948), that:

"Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious [392 U.S. 236, 251] organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.'"

The *Everson* and *McCullum* cases plainly interpret the First and Fourteenth Amendments as protecting the taxpayers of a State from being compelled to pay taxes to their government to

support the agencies of private religious organizations the taxpayers oppose. To authorize a State to tax its residents for such church purposes is to put the State squarely in the religious activities of certain religious groups that happen to be strong enough politically to write their own religious preferences and prejudices into the laws. This links state and churches together in controlling the lives and destinies of our citizenship - a citizenship composed of people of myriad religious faiths, some of them bitterly hostile to and completely intolerant of the others. It was to escape laws precisely like this that a large part of the Nation's early immigrants fled to this country. It was also to escape such laws and such consequences that the First Amendment was written in language strong and clear barring passage of any law "respecting an establishment of religion."

It is true, of course, that the New York law does not as yet formally adopt or establish a state religion. But it takes a great stride in that direction and coming events cast their shadows before them. The same powerful sectarian religious propagandists who have succeeded in securing passage of the present law to help religious schools carry on their sectarian religious purposes can and doubtless will continue their propaganda, looking toward complete domination and supremacy of their particular brand of religion. 1 And it nearly always is [392 U.S. 236, 252] by insidious approaches that the citadels of liberty are most successfully attacked. 2

I know of no prior opinion of this Court upon which the majority here can rightfully rely to support its holding this New York law constitutional. In saying this, I am not unmindful of the fact that the New York Court of Appeals purported to follow *Everson v. Board of Education*, supra, in which this Court, in an opinion written by me, upheld a New Jersey law authorizing reimbursement to parents for the transportation of children attending sectarian schools. That law did not attempt to deny the benefit of its general terms to children of any faith going to any legally authorized school. Thus, it was treated in the same way as a general law paying the streetcar fare of all school children, or a law providing midday lunches for all children or all school children, or a law to provide police protection for children going to and from school, or general laws to provide police and fire protection for buildings, including, of course, churches and church school buildings as well as others.

As my Brother DOUGLAS so forcefully shows, in an argument with which I fully agree, upholding a State's power to pay bus or streetcar fares for school children cannot provide support for the validity of a state law using tax-raised funds to buy school books for a religious school. The First Amendment's bar to establishment of religion must preclude a State from using funds levied from all of its citizens to purchase books for use by sectarian schools, which, although "secular," realistically will in some way inevitably tend to propagate the religious views of the favored sect. Books are the most essential tool of education since they contain the resources of knowledge which the educational process is designed to exploit. In this sense it is not difficult [392 U.S. 236, 253] to distinguish books, which are the heart of any school, from bus fares, which provide a convenient and helpful general public transportation service. With respect to the former, state financial support actively and directly assists the teaching and propagation of sectarian religious viewpoints in clear conflict with the First Amendment's establishment bar; with respect to the latter, the State merely provides a general and nondiscriminatory transportation service in no way related to substantive religious views and beliefs.

This New York law, it may be said by some, makes but a small inroad and does not amount to complete state establishment of religion. But that is no excuse for upholding it. It requires no prophet to foresee that on the argument used to support this law others could be upheld providing for state or federal government funds to buy property on which to erect religious school buildings or to erect the buildings themselves, to pay the salaries of the religious school teachers, and finally to have the sectarian religious groups cease to rely on voluntary contributions of members of their sects while waiting for the Government to pick up all the bills for the religious schools. Arguments made in favor of this New York law point squarely in this direction, namely, that the fact that government has not heretofore aided religious schools with tax-raised funds amounts to a discrimination against those schools and against religion. And that there are already efforts to have government supply the money to erect buildings for sectarian religious schools is shown by a recent Act of Congress which apparently allows for precisely that. See Higher Education Facilities Act of 1963, 77 Stat. 363, 20 U.S.C. 701 et seq.

I still subscribe to the belief that tax-raised funds cannot constitutionally be used to support religious schools, buy their school books, erect their buildings, pay their [392 U.S. 236, 254] teachers, or pay any other of their maintenance expenses, even to the extent of one penny. The First Amendment's prohibition against governmental establishment of religion was written on the assumption that state aid to religion and religious schools generates discord, disharmony, hatred, and strife among our people, and that any government that supplies such aids is to that extent a tyranny. And I still believe that the only way to protect minority religious groups from majority groups in this country is to keep the wall of separation between church and state high and impregnable as the First and Fourteenth Amendments provide. The Court's affirmance here bodes nothing but evil to religious peace in this country.

[Footnote 1] See dissenting opinion of MR. JUSTICE DOUGLAS, post, p. 254.

[Footnote 2] See *Boyd v. United States*, 116 U.S. 616 .

MR. JUSTICE DOUGLAS, dissenting.

We have for review a statute which authorizes New York State to supply textbooks to students in parochial as well as in public schools. The New York Court of Appeals sustained the law on the grounds that it involves only "secular textbooks" and that that type of aid falls within *Everson v. Board of Education*, 330 U.S. 1 , 1 where a divided Court upheld a state law which made bus service available to students in parochial schools as well as to students in public schools. 20 N. Y. 2d 109, 228 N. E. 2d 791, 281 N. Y. S. 2d 799.

The statute on its face empowers each parochial school to determine for itself which textbooks will be eligible for loans to its students, for the Act provides that the [392 U.S. 236, 255] only text which the State may provide is "a book which a pupil is required to use as a text for a semester or more in a particular class in the school he legally attends." New York Education Law 701, subd. 2. This initial and crucial selection is undoubtedly made by the parochial school's principal or its individual instructors, who are, in the case of Roman Catholic schools, normally priests or nuns.

The next step under the Act is an "individual request" for an eligible textbook (701, subd. 3), but the State Education Department has ruled that a pupil may make his request to the local public board of education through a "private school official." 2 Local boards have accordingly provided for those requests to be made by the individual or "by groups or classes." 3 And forms for textbook requisitions to be filled out by the head of the private school are provided. 4

The role of the local public school board is to decide whether to veto the selection made by the parochial school. This is done by determining first whether the text has been or should be "approved" for use in public schools and second whether the text is "secular," "nonreligious," or "non-sectarian." 5 The local boards apparently [392 U.S. 236, 256] have broad discretion in exercising this veto power. 6

Thus the statutory system provides that the parochial school will ask for the books that it wants. Can there be the slightest doubt that the head of the parochial school will select the book or books that best promote its sectarian creed?

If the board of education supinely submits by approving and supplying the sectarian or sectarian-oriented textbooks, the struggle to keep church and state separate has been lost. If the board resists, then the battle line between church and state will have been drawn and the contest will be on to keep the school board independent or to put it under church domination and control. [392 U.S. 236, 257]

Whatever may be said of Everson, there is nothing ideological about a bus. There is nothing ideological about a school lunch, or a public nurse, or a scholarship. The constitutionality of such public aid to students in parochial schools turns on considerations not present in this textbook case. The textbook goes to the very heart of education in a parochial school. It is the chief, although not solitary, instrumentality for propagating a particular religious creed or faith. How can we possibly approve such state aid to a religion? A parochial school textbook may contain many, many more seeds of creed and dogma than a prayer. Yet we struck down in *Engel v. Vitale*, 370 U.S. 421, an official New York prayer for its public schools, even though it was not plainly denominational. For we emphasized the violence done the Establishment Clause when the power was given religious-political groups "to write their own prayers into law." *Id.*, at 427. That risk is compounded here by giving parochial schools the initiative in selecting the textbooks they desire to be furnished at public expense.

Judge Van Voorhis, joined by Chief Judge Fuld and Judge Breitel, dissenting below, said that the difficulty with the textbook loan program "is that there is no reliable standard by which secular and religious textbooks [392 U.S. 236, 258] can be distinguished from each other." 20 N. Y. 2d, at 122, 228 N. E. 2d, at 798, 281 N. Y. S. 2d, at 809. The New York Legislature felt that science was a nonsectarian subject (see n. 5, supra). Does this mean that any general science textbook intended for use in grades 7-12 may be provided by the State to parochial school students? May John M. Scott's *Adventures in Science* (1963) be supplied under the textbook loan program? This book teaches embryology in the following manner:

"To you an animal usually means a mammal, such as a cat, dog, squirrel, or guinea pig. The new animal or embryo develops inside the body of the mother until birth. The fertilized egg

becomes an embryo or developing animal. Many cell divisions take place. In time some cells become muscle cells, others nerve cells or blood cells, and organs such as eyes, stomach, and intestine are formed.

"The body of a human being grows in the same way, but it is much more remarkable than that of any animal, for the embryo has a human soul infused into the body by God. Human parents are partners with God in creation. They have very great powers and great responsibilities, for through their cooperation with God souls are born for heaven." (At 618-619.) 7

Comparative economics would seem to be a nonsectarian subject. Will New York, then, provide Arthur J. Hughes' general history text, *Man in Time* (1964), to [392 U.S. 236, 259] parochial school students? It treats that topic in this manner:

"Capitalism is an economic system based on man's right to private property and on his freedom to use that property in producing goods which will earn him a just profit on his investment. Man's right to private property stems from the Natural Law implanted in him by God. It is as much a part of man's nature as the will to self-preservation." (At 560.)

"The broadest definition of socialism is government ownership of all the means of production and distribution in a country. . . . Many, but by no means all, Socialists in the nineteenth century believed that crime and vice existed because poverty existed, and if poverty were eliminated, then crime and vice would disappear. While it is true that poor surroundings are usually unhealthy climates for high moral training, still, man has the free will to check himself. Many

Socialists, however, denied free will and said that man was a creation of his environment. . . . If Socialists do not deny Christ's message, they often ignore it.

Christ showed us by His life that this earth is a testing ground to prepare man for eternal happiness. Man's interests should be in this direction at least part of the time and not always directed toward a futile quest for material goods." (At 561-564.) 8

Mr. Justice Jackson said, ". . . I should suppose it is a proper, if not an indispensable, part of preparation for a [392 U.S. 236, 260] worldly life to know the roles that religion and religions have played in the tragic story of mankind." *McCullum v. Board of Education*, 333 U.S. 203, 236 (concurring opinion). Yet, as he inquired, what emphasis should one give who teaches the Reformation, the Inquisition, or the early effort in New England to establish "a Church without a Bishop and a State without a King?" *Ibid.* What books should be chosen for those subjects?

Even where the treatment given to a particular topic in a school textbook is not blatantly sectarian, it will necessarily have certain shadings that will lead a parochial school to prefer one text over another. 9

The Crusades, for example, may be taught as a Christian undertaking to "save the Holy Land" from the Moslem Turks who "became a threat to Christianity and its holy places," which "they did not treat . . . with respect" [392 U.S. 236, 261] (H. Wilson, F. Wilson, B. Erb & E. Clucas, *Out of the Past* 284 (1954)), or as essentially a series of wars born out of political and materialistic motives (see G. Leinwand, *The Pageant of World History* 136-137 (1965)).

Is the dawn of man to be explained in the words, "God created man and made man master of the earth" (P. Furlong, *The Old World and America* 5 (1937)), or in the language of evolution (see T. Wallbank, *Man's Story* 32-35 (1961))?

Is the slaughter of the Aztecs by Cortes and his entourage to be lamented for its destruction of a New World culture (see J. Caughey, J. Franklin, & E. May, *Land of the Free* 27-28 (1965)), or forgiven because the Spaniards "carried the true Faith" to a barbaric people who practiced human sacrifice (see P. Furlong, Sr. Margaret, & D. Sharkey, *America Yesterday* 17, 34 (1963))?

Is Franco's revolution in Spain to be taught as a crusade against anti-Catholic forces (see R. Hoffman, G. Vincitorio, & M. Swift, *Man and His History* 666-667 (1958)) 10 or as an effort by reactionary elements to regain control of that country (see G. Leinwand, *The Pageant of World History*, supra, at 512)? 11 Is the expansion of [392 U.S. 236, 262] communism in select areas of the world a manifestation of the forces of Evil campaigning against the forces of Good? See A. Hughes, *Man in Time*, supra, at 565-568, 666-669, 735-748.

It will be often difficult, as Mr. Justice Jackson said, to say "where the secular ends and the sectarian begins in education." *McCollum v. Board of Education*, 333 U.S., at 237 -238. But certain it is that once the so-called "secular" textbook is the prize to be won by that religious faith which selects the book, the battle will be on for those positions of control. Judge Van Voorhis expressed the fear that in the end the state might dominate the church. Others fear that one sectarian group, gaining control of the state agencies which approve the "secular" textbooks, will use their control to disseminate ideas most congenial to their faith. It must be remembered that the very existence of the religious school - whether Catholic or Mormon, Presbyterian or Episcopalian - is to provide an education oriented to the dogma of the particular faith. 12 [392 U.S. 236, 263]

Father Peter O'Reilly put the matter succinctly when he disclosed what was happening in one Catholic school: 13 "On February 24, 1954, Rev. Cyril F. Meyer, C. M., then Vice President of the University, sent the following letter to all the faculty, both Catholics and non-Catholics, even those teaching law, science, and mathematics:

"Dear Faculty Member:

"As a result of several spirited discussions in the Academic Senate, a resolution was passed by that body that a self-evaluation be made of the effectiveness with which we are achieving in our classrooms the stated objectives of the University. . . . The primacy of the spiritual is the reason for a Christian university. Our goal is not merely to equip students with marketable skills. It is far above this - to educate man, the whole man, the theocentric man. As you are well

aware, we strive to educate not only for personal and social success in secular society, but far more for leadership toward a theocentric society. . . . [392 U.S. 236, 264]

"May I, therefore, respectfully request that you submit answers as specific as possible to the following questions:

"1. What do you do to make your particular courses theocentric?

"2. Do you believe there is anything the Administration or your colleagues can do to assist you in presenting your particular courses more "according to the philosophical and theological traditions of the Roman Catholic Church"? Do not hesitate to let us know. There is no objective of our University more fundamental than this. We must all be aware that "the classroom that is not a temple is a den."

"Please try to have your answers, using this size paper, returned to me by March 10."

This tendency is no Catholic monopoly:

"The Presbyterian-affiliated Lewis and Clark College seems to have a similar interest in appearances of autonomy, with a view to avoiding possible legal bars to both federal funds and gifts from some foundations. The change, which legitimizes the college as an autonomous educational institution, removes the requirement that each presbytery in Oregon have at least one representative on the board, but it was made clear 'The college wishes to change only its legal relationship to the synod and not its purposes,' and promised that it still will elect a minister from each presbytery to the board on nomination of the synod, and will consult the synod before making any change in its statement of purpose, which defines it as a Presbyterian-related college." 14

The challenged New York law leaves to the Board of Regents, local boards of education, trustees, and other school authorities the supervision of the textbook program. [392 U.S. 236, 265]

The Board of Regents (together with the Commissioner of Education) has powers of censorship over all textbooks that contain statements seditious in character, or evince disloyalty to the United States or are favorable to any nation with which we are at war. New York Education Law 704. Those powers can cut a wide swath in many areas of education that involve the ideological element. 15

In general textbooks are approved for distribution by "boards of education, trustees or such body or officer as perform the functions of such boards . . ." New York Education Law 701, subd. 1. These school boards are generally elected, 2013, 2502, subd. 2, though in a few cities they are appointed. 2553. Where there are trustees, they are elected. 1523, 1602, 1702. And superintendents who advise on textbook selection are appointed by the board of education or the trustees. 1711, 2503, subd. 5, 2507.

The initiative to select and requisition "the books desired" is with the parochial school. Powerful religious-political pressures will therefore be on the state agencies to provide the books that are desired.

These then are the battlegrounds where control of textbook distribution will be won or lost. Now that "secular" textbooks will pour into religious schools, we can rest assured that a contest will be on to provide those books for religious schools which the dominant religious group

concludes best reflect the theocentric or other philosophy of the particular church. [392 U.S. 236, 266]

The stakes are now extremely high - just as they were in the school prayer cases (see *Engel v. Vitale*, supra) - to obtain approval of what is "proper." For the "proper" books will radiate the "correct" religious view not only in the parochial school but in the public school as well.

Even if I am wrong in that basic premise, we still should not affirm the judgment below. Judge Van Voorhis, dissenting in the New York Court of Appeals, thought that the result of tying parochial school textbooks to public funds would be to put nonsectarian books into religious schools, which in the long view would tend towards state domination of the church. 20 N. Y. 2d, at 123, 228 N. E. 2d, at 798, 281 N. Y. S. 2d, at 810. That would, indeed, be the result if the school boards did not succumb to "sectarian" pressure or control. So, however the case be viewed - whether sectarian groups win control of school boards or do not gain such control - the principle of separation of church and state, inherent in the Establishment Clause of the First Amendment, is violated by what we today approve.

What Madison wrote in his famous Memorial and Remonstrance against Religious Assessments is highly pertinent here: 17

"Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, 18 may force him to conform to any other establishment in all cases whatsoever?" [392 U.S. 236, 267]

APPENDIX A TO OPINION OF DOUGLAS, J., DISSENTING.

CODE - 220-399-2-NYSTL REQ. NUMBER

TEXTBOOK REQUISITION

PUBLISHERS NAME

STREET ADDRESS

CITY AND STATE

SHIP TO - EDISON WAREHOUSE

STREET - VAN GUYSLING AVE.

CITY & STATE - SCHENECTADY, N. Y.

NO. COPIES ... NAME OF BOOK TOTAL ...

EDITION

GRADE LEVEL

PRICE PER BOOK Total Amount

I certify that the following number of children residing in your school district have individually requested the loan of the textbook indicated above for the school year 1967-68 in accordance with Section 701, subdivision 2, of the Education Law. Form 1 requests have been submitted to you for each child. I also certify that the textbook requested is a non-sectarian edition and approved for use by a New York State Public School District.

..... Name of Parochial/Private School Official of Private School [392 U.S. 236, 268]

APPENDIX B TO OPINION OF DOUGLAS, J., DISSENTING.

LETTER OF FRANCIS CARDINAL SPELLMAN, NOVEMBER 1, 1967.

One of the most precious rights which we have in our civil society is the right to vote. This right should be exercised with reverence and with understanding - particularly when emotional feelings run high.

An important opportunity to exercise this right will be provided on next Tuesday, November 7th. On that day we are asked to choose between the old State Constitution and the proposed new State Constitution. We will decide whether the provisions of the New Constitution will better serve the changing needs of our families, our neighbors, and our institutions, both public and private.

We are faced with a grave responsibility to weigh this choice carefully and to vote conscientiously. I have viewed with concern the tone of the past month's discussion with regard to the proposed new Constitution. I am disappointed that so much of the opposition to the Constitution comes from those forces in our pluralistic society who would deny equal educational opportunities to children attending parochial schools. As a citizen I am dismayed to think that they would have overwhelmingly supported the new Constitution were it not for the fact that it repeals the Blaine Amendment.

The proposed new Constitution, as a whole, is so closely related to our lives that it must command our careful consideration. This document addresses itself to values basic to the fulfillment of our lives as citizens. We must be aware that this Constitution contains new provisions designed to facilitate the rebuilding of our communities, new provisions committing the State to the [392 U.S. 236, 269] maximum development of the educational potential of every citizen, new provisions enabling government,

in a responsible way, to mobilize all the forces of society to meet the changing needs of all our people, to enhance their environment and to promote their social well-being.

At the close of the Constitutional Convention I expressed my opinion that the Convention had produced a document worthy of support by the people of New York State. Nothing in the public debate since then has caused me to alter my judgment.

I know that you will conscientiously fulfill your civic duty and that you will give serious consideration to this proposed new Constitution. *

[Footnote 1] Everson, relied on by the Court of Appeals of New York, did not involve textbooks and did not present the serious problems raised by a form of aid to parochial students which injects religious issues into the choice of curriculum. In the only decision of this Court upholding a state grant of textbooks to sectarian school students, *Cochran v. Board of Education*, 281 U.S. 370, the First Amendment issue was not raised. See *id.*, at 370-373; *Everson v. Board of Education*, 330 U.S. 1, 29, n. 3 (dissenting opinion).

[Footnote 2] Letter from Herbert F. Johnson, State Education Department, to City, Village and District Superintendents & Supervising Principals, □ 5, Jan. 10, 1966, reproduced in Brief for American Jewish Committee et al. as Amici Curiae, at 43, 44.

[Footnote 3] Manual of Instructions on Recordkeeping Procedures for Textbooks Loaned in Conformance With Provisions of the New York State Textbook Law □ 2.3 (1967), reproduced in Brief for National Jewish Commission on Law and Public Affairs as Amicus Curiae, at 24, 25.

[Footnote 4] See Appendix A to this opinion.

[Footnote 5] The State Court of Appeals used the phrases "secular textbooks" and "nonreligious textbooks" without any elaboration as to what was meant. 20 N. Y. 2d, at 117, 228 N. E. 2d, at 794-795, 281 N. Y. S. 2d, at 805. The legislature, in its "statement of policy" to the Act (Laws of 1965, c. 320, 1), speaks of aiding instruction [392 U.S. 236, 256] in "non-sectarian subjects," and gives as examples "science, mathematics, [and] foreign languages." The State Department of Education has stated that "it is necessary that . . . [t]he textbooks be non-sectarian (this eliminates denominational editions and those carrying the 'imprimatur' or 'nihil obstat' of a religious authority)" Opinion of Counsel No. 181. There are no other definitions to be found.

The Court was advised at oral argument by the Assistant Attorney General that Opinion of Counsel No. 181 is advisory only and not binding. It would state the policy of the New York Department of Education in event of an appeal to it by a taxpayer of a local board's decision that a certain text was "non-sectarian" or should be

"approved." The Regents of the University of the State of New York, who have the last word on such matters and are specifically authorized by 701, subd. 3, to promulgate regulations respecting the textbook loan program, have not done so, and their position on what is "non-sectarian" is unknown.

[Footnote 6] For example the regulations of the Board of Education of the City of New York respecting approval of textbooks for public schools contain no limitations directly relevant to the question of sectarianism. The material is to "promote the objectives of the educational program," "treat the subject competently and accurately," "be in good taste," "have a wholesome tone that is consonant with right conduct and civic values," "be in harmony with American democratic ideals and moral values," "be free of any reflection on the dignity and status of any group, race, or religion, [392 U.S. 236, 257] whether expressed or implied, by statement or omission," and "be free of objectionable features of over-dramatization, violence, or crime." Guiding Principles for Schools in the Selection and Use of "Non-Listed" Instructional Materials (1952). Opinion of Counsel No. 181 (see n. 5, supra) simply states that the local board, if it finds that no other board has approved the text in question, should "decide if it wishes to approve the same itself." This opinion of counsel also states that if the board is in doubt as to whether a text is "non-sectarian," that is whether it carries an imprimatur or nihil obstat or is a denominational edition, it "must make the appropriate determination."

[Footnote 7] Although the author of this textbook is a priest, the text contains no imprimatur and no nihil obstat. Although published by a Catholic press, the Loyola University Press, Chicago, it is not marked in any manner as a "denominational edition," but is simply the general edition of the book. Accordingly, under Opinion of Counsel No. 181, the only document approaching a "regulation" on the issue involved here, *Adventures in Science* would qualify as "non-sectarian." See nn. 5, 6, supra.

[Footnote 8] *Man In Time* contains a nihil obstat and an imprimatur. Thus, if Opinion of Counsel No. 181 (see nn. 5, 6, supra) is applicable, this book may not be provided by the State. The Opinion of Counsel, however, is only "advisory," we are told; moreover, the religious endorsements could easily be removed by the author and publisher at the next printing.

[Footnote 9] Some parochial schools may prefer those texts which are liberally sprinkled with religious vignettes. This creeping sectarianism avoids the direct teaching of religious doctrine but keeps the student continually reminded of the sectarian orientation of his education. In P. Furlong, Sr. Margaret, & D. Sharkey's *American history text, America Yesterday* (1963), for example, the student is informed that the first mass to be said in what is now the United States was in 1526 near Chesapeake Bay, that eight French missionaries to Canada in the early 1600's were canonized in 1930, that one of the men who signed the Declaration of Independence and two who attended the Constitutional Convention were Catholic, and that the superintendent of the Hudson Bay Company's outpost in the Oregon

country converted to Catholicism in 1842. At 26, 73-74, 102, 140, 235. And J. Scott's *Adventures in Science* (1963), in teaching the atmospheric conditions prevailing at the top of Mount Everest, informs the student that when Sir Edmund Hillary first scaled this peak he placed there a "tiny crucifix" which a Benedictine monk had supplied. At 72.

America Yesterday, supra, is another example of a text written by the clergy (here a priest and nun together with one layman) that contains no imprimatur and no nihil obstat and is not a denominational edition. See nn. 5-7.

[Footnote 10] "In Spain early in 1936 a popular-front organization won a victory in the national elections. The result was a government made up of discordant political elements that failed to preserve civil order in the country. Violent anti-Catholics attacked and burned churches and monasteries, and the government did not even try to prevent these crimes. As a result, Spaniards who loved their country and were loyal to their religion revolted against the popular-front government of the republic. An able general, Francisco Franco, put himself at the head of the revolt, which began in July 1936."

[Footnote 11] "Spain, at the end of World War I, was a backward, poverty-stricken monarchy. In 1931, the king resigned and the people established a republic. The Spanish tried many reforms, but there were many who wanted to go back to the old ways and old privileges of the monarchy. Those who were rich wanted to hold on to [392 U.S. 236, 262] their property. These people thought that Francisco Franco, a Fascist, could help them.

"In 1936, a civil war started which soon came to be called a 'dress rehearsal' for World War II because the Fascist countries of Italy and Germany supported

Franco and his rebels. On the other hand, Russia supported the loyalists (as the armies of the republic were called). The democratic countries might have

supported the loyalists, too, but fear of communism prevented them from doing so. Franco defeated the loyalists and, in 1938, became dictator of Spain and

today as El Caudillo ('The Leader') still rules Spain with an iron hand."

[Footnote 12] The purpose of the parochial school in the beginning is clear beyond peradventure. The generally held Roman Catholic position in the matter of education in public and parochial schools has been well summarized by the late Monsignor John A. Ryan (1869-1945):

"As a matter of fact, the State maintains a system of schools which is not completely satisfactory to Catholics, inasmuch as no [392 U.S. 236, 263] place is given

to morality and religion. Since the Church realizes that the teaching of religion and instruction in the secular branches cannot rightfully or successfully be

separated one from the other, she is compelled to maintain her own system of schools for general education as well as for religious instruction. . . ." 2 A.

Stokes, *Church and State in the United States* 654 (1950).

"The education in the parochial schools follows in general the curriculum in the public schools, the main differences being that about 15 per cent of the time is given to religious instruction, and that the Catholic point of view is brought out in the treatment of historical and other subjects, just as the Protestant point of view might be emphasized in a Protestant school." Ibid.

Some, however, think that some parochial schools are changing their character under practical pressures of educational competition. See, e. g., Fleming, *Fordham Is Trying to be catholic With a Small "c,"* N. Y. Times Magazine, Dec. 10, 1967, p. 32.

[Footnote 13] St. John's I: A Chronicle of Folly, 4 Continuum 223, 233-234 (1966).

[Footnote 14] Id., 234 (emphasis in original).

[Footnote 15] Cf. *Adler v. Board of Education*, 342 U.S. 485 ; *Barsky v. Board of Regents*, 347 U.S. 442 .

[Footnote 16] The proportions of the contest are suggested in the letter dated November 1, 1967, that the late Cardinal Spellman directed to be read at all the masses on Sunday, November 5, 1967, just before the vote on a proposed Constitution that would have opened wide the door to state aid to parochial schools. I have attached the letter as Appendix B to this opinion.

[Footnote 17] 2 Writings of James Madison 186 (Hunt ed. 1901).

[Footnote 18] For a recent account of the extent to which public funds are being poured into sectarian schools see S. Rep. No. 473, 90th Cong., 1st Sess., 9-10 (1967).

[Footnote *] One parochial school lobbyist group has urged Congress that in order to avoid an establishment of secularism in education, federal monies must be distributed to all the various sects which operate parochial schools.

"[T]here is no valueless or neutral school," it is argued, and education and religion cannot be separated from each other. Hearings on S. 3 and H. R. 1198 before Subcommittee No. 3 of the House Committee on the Judiciary, 90th Cong., 2d Sess., at ____ (1968) (statement of Dr. Francis J. Brown, chairman, National Association for Personal Rights in Education).

The views expressed by my Brother HARLAN in his concurring opinion are somewhat similar. His approval, on a constitutional basis, of government aid to our country's churches "calculated to achieve nonreligious purposes otherwise within the competence of the State" and not involving the state "significantly and directly in the realm of the sectarian" would seem to permit considerable diversion of public funds to the various sects. The state's "competence" in the areas of health, safety,

and welfare of the people would under that view permit it to fund a church's charity programs, [392 U.S. 236, 270] pay for renovating dilapidated church buildings, and pay for the services and upkeep, such as janitors' salaries and utility bills, necessary to maintain church buildings in safe and healthful condition. Indeed, short of state-provided prayer books, sacramental wine, and the like, churches could, apparently, become virtual state dependencies.

Should that, unhappily, come to pass, then perhaps the church would in time become an administrative arm of the state, a goal predicted by J. Galbraith for "the mature corporation." *The New Industrial State* 393 (1967).

Then the circle would be completed and we would return to the point where the long struggle to keep church and state separate first started.

Such a constitutional form of government is conceivable. But proposals for putting each of the Nation's religious sects on the public payroll should be addressed to a federal constitutional convention, since, as my Brother BLACK shows, such a scheme was thoroughly rejected in 1791 with the adoption of the First Amendment.

MR. JUSTICE FORTAS, dissenting.

The majority opinion of the Court upholds the New York statute by ignoring a vital aspect of it. Public funds are used to buy, for students in sectarian schools, textbooks which are selected and prescribed by the sectarian [392 U.S. 236, 270] schools themselves. As my Brother DOUGLAS points out, despite the transparent camouflage that the books are furnished to students, the reality is that they are selected and their use is prescribed by the sectarian authorities. The child must use the prescribed book. He cannot use a different book prescribed for use in the public schools. The State cannot choose the book to be used. It is true that the public school boards must "approve" the book selected by the sectarian authorities; but this has no real significance. The purpose of these provisions is to hold out promise that the books will be "secular" (but cf. DOUGLAS, J., dissenting, ante, at 256, n. 6); but the fact remains that the books are chosen by and for the sectarian schools.

It is misleading to say, as the majority opinion does, that the New York "law merely makes available to all children the benefits of a general program to lend school books free of charge." (Ante, at 243.) This is not a "general" program. It is a specific program to use state [392 U.S. 236, 271] funds to buy books prescribed by sectarian schools which, in New York, are primarily Catholic, Jewish, and Lutheran sponsored schools. It could be called a "general" program only if the school books made available to all children were precisely the same - the books selected for and used in the public schools. But this program is not one in which all children are treated alike, regardless of where they go to school. This program, in its unconstitutional features, is hand-tailored to satisfy the specific needs of sectarian schools. Children attending such schools are given special books - books selected by the sectarian authorities. How can this be other than the use of public money to aid those

sectarian establishments?

It is also beside the point, in my opinion, to "assume," as the majority opinion does, that "books loaned to students are books that are not unsuitable for use in the public schools because of religious content." (Ante, at 245.) The point is that the books furnished to students of sectarian schools are selected by the religious authorities and are prescribed by them.

This case is not within the principle of *Everson v. Board of Education*, 330 U.S. 1 (1947). Apart from the differences between textbooks and bus rides, the present statute does not call for extending to children attending sectarian schools the same service or facility extended to children in public schools. This statute calls for furnishing special, separate, and particular books, specially, separately, and particularly chosen by religious sects or their representatives for use in their sectarian schools. This is the infirmity, in my opinion. This is the feature that makes it impossible, in my view, to reach any conclusion other than that this statute is an unconstitutional use of public funds to support an establishment of religion.

This is the feature of the present statute that makes it totally inaccurate to suggest, as the majority does [392 U.S. 236, 272] here, that furnishing these specially selected books for use in sectarian schools is like "public provision of police and fire protection, sewage facilities, and streets and sidewalks." (Ante, at 242.) These are furnished to all alike. They are not selected on the basis of specification by a religious sect. And patrons of any one sect do not receive services or facilities different from those accorded members of other religions or agnostics or even atheists.

I would reverse the judgment below. [392 U.S. 236, 273]

U.S. Supreme Court

WITTERS v. WASH. DEPT. OF SERVICES FOR BLIND, 474 U.S. 481 (1986)

474 U.S. 481

**WITTERS v. WASHINGTON DEPARTMENT OF SERVICES FOR THE BLIND
CERTIORARI TO THE SUPREME COURT OF WASHINGTON**

No. 84-1070.

Argued November 6, 1985

Decided January 27, 1986

JUSTICE MARSHALL delivered the opinion of the Court.

The Washington Supreme Court ruled that the First Amendment precludes the State of Washington from extending assistance under a state vocational rehabilitation assistance program to a blind person studying at a Christian college and seeking to become a pastor, missionary, or youth director. Finding no such federal constitutional barrier on the record presented to us, we reverse and remand. [474 U.S. 481, 483]

I

Petitioner Larry Witters applied in 1979 to the Washington Commission for the Blind for vocational rehabilitation services pursuant to Wash. Rev. Code 74.16.181 (1981). 1 That statute authorized the Commission, inter alia, to "[p]rovide for special education and/or training in the professions, business or trades" so as to "assist visually handicapped persons to overcome vocational handicaps and to obtain the maximum degree of self-support and self-care." Ibid. Petitioner, suffering from a progressive eye condition, was eligible for vocational rehabilitation assistance under the terms of the statute. 2 He was at the time attending Inland Empire School of the Bible, a private Christian college in Spokane, Washington, and studying the Bible, ethics, speech, and church administration in order to equip himself for a career as a pastor, missionary, or youth director. App. 7-8.

The Commission denied petitioner aid. It relied on an earlier determination embodied in a Commission policy statement that "[t]he Washington State constitution forbids the use of public funds to assist an individual in the pursuit of a career or degree in theology or related areas," id., at 4, and on its conclusion that petitioner's training was "religious [474 U.S. 481, 484] instruction" subject to that ban. Id., at 1. That ruling was affirmed by a state hearings examiner, who held that the Commission was precluded from funding petitioner's training "in light of the State Constitution's prohibition against the state directly or indirectly supporting a religion." App. to Pet. for Cert. F-6. The hearings examiner cited Wash. Const., Art. I, 11, providing in part that "no public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment," and Wash. Const., Art. IX, 4, providing that "[a]ll schools maintained or supported wholly or in part by the public funds

shall be forever free from sectarian control or influence." App. to Pet. for Cert. F-4. That ruling, in turn, was upheld on internal administrative appeal.

Petitioner then instituted an action in State Superior Court for review of the administrative decision; the court affirmed on the same state-law grounds cited by the agency. The State Supreme Court affirmed as well. *Witters v. Commission for the Blind*, 102 Wash. 2d 624, 689 P.2d 53 (1984). The Supreme Court, however, declined to ground its ruling on the Washington Constitution. Instead, it explicitly reserved judgment on the state constitutional issue and chose to base its ruling on the Establishment Clause of the Federal Constitution. The court stated:

"The Supreme Court has developed a 3-part test for determining the constitutionality of state aid under the establishment clause of the First Amendment. 'First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . .; finally, the statute must not foster "an excessive government entanglement with religion."' *Lemon v. Kurtzman*, [403 U.S. 602, 612 -613 (1971)]. To withstand attack under the establishment clause, the challenged state action [474 U.S. 481, 485] must satisfy each of the three criteria." *Id.*, at 627-628, 689 P.2d, at 55.

The Washington court had no difficulty finding the "secular purpose" prong of that test satisfied. Applying the second prong, however, that of "principal or primary effect," the court held that "[t]he provision of financial assistance by the State to enable someone to become a pastor, missionary, or church youth director clearly has the primary effect of advancing religion." *Id.*, at 629, 689 P.2d, at 56. The court, therefore, held that provision of aid to petitioner would contravene the Federal Constitution. In light of that ruling, the court saw no need to reach the "entanglement" prong; it stated that the record was in any case inadequate for such an inquiry.

We granted certiorari, 471 U.S. 1002 (1985), and we now reverse.

II

The Establishment Clause of the First Amendment has consistently presented this Court with difficult questions of interpretation and application. We acknowledged in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), that "we can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of constitutional law." *Id.*, at 612, quoted in *Mueller v. Allen*, 463 U.S. 388, 393 (1983). Nonetheless, the Court's opinions in this area have at least clarified "the broad contours of our inquiry," *Committee for Public Education and Religious Liberty v. Nyquist*, 413 U.S. 756, 761 (1973), and are sufficient to dispose of this case.

We are guided, as was the court below, by the three-part test set out by this Court in *Lemon* and quoted *supra*, at 484-485. See *Grand Rapids School District v. Ball*, 473 U.S. 373, 382 -383 (1985). Our analysis relating to the first prong of that test is simple: all parties concede the unmistakably secular purpose of the Washington program. That program was designed to promote the well-being of the visually handicapped through the provision of vocational rehabilitation [474 U.S. 481, 486] services, and no more than a minuscule amount of the aid awarded under the program is likely to flow to religious education. No party suggests that the State's "actual purpose" in creating the program was to endorse religion, *Wallace v. Jaffree*, 472

U.S. 38, 74 (1985), quoting *Lynch v. Donnelly*, 465 U.S. 668, 690 (1984) (O'CONNOR, J., concurring), or that the secular purpose articulated by the legislature is merely "sham." Wallace, *supra*, at 64 (POWELL, J., concurring).

The answer to the question posed by the second prong of the Lemon test is more difficult. We conclude, however, that extension of aid to petitioner is not barred on that ground either. 3 It is well settled that the Establishment Clause is not violated every time money previously in the possession of a State is conveyed to a religious institution. For example, a State may issue a paycheck to one of its employees, [474 U.S. 481, 487] who may then donate all or part of that paycheck to a religious institution, all without constitutional barrier; and the State may do so even knowing that the employee so intends to dispose of his salary. It is equally well settled, on the other hand, that the State may not grant aid to a religious school, whether cash or in kind, where the effect of the aid is "that of a direct subsidy to the religious school" from the State. *Grand Rapids School District v. Ball*, 473 U.S., at 394. Aid may have that effect even though it takes the form of aid to students or parents.

Ibid.; see, e. g., *Wolman v. Walter*, 433 U.S. 229, 248 -251 (1977); *Committee for Public Education and Religious Liberty v. Nyquist*, *supra*; *Sloan v. Lemon*, 413 U.S. 825 (1973). The question presented is whether, on the facts as they appear in the record before us, extension of aid to petitioner and the use of that aid by petitioner to support his religious education is a permissible transfer similar to the hypothetical salary donation described above, or is an impermissible "direct subsidy."

Certain aspects of Washington's program are central to our inquiry. As far as the record shows, vocational assistance provided under the Washington program is paid directly to the student, who transmits it to the educational institution of his or her choice. Any aid provided under Washington's program that ultimately flows to religious institutions does so only as a result of the genuinely independent and private choices of aid recipients. 4 Washington's program is "made available generally without regard to the sectarian-nonsectarian, or public-nonpublic nature of the institution benefited," *Committee for Public Education and Religious Liberty v. Nyquist*, 413 U.S., at 782 -783, n. 38, and is in no way skewed towards religion. It is not one of "the ingenious plans for channeling state aid to sectarian schools that periodically reach this Court," *id.*, at 785. It creates no financial incentive for students to undertake sectarian education, see *id.*, at 785-786. It does not tend to provide greater or broader benefits for recipients who apply their aid to religious education, nor are the full benefits of the program limited, in large part or in whole, to students at sectarian institutions. On the contrary, aid recipients have full opportunity to expend vocational rehabilitation aid on wholly secular education, and as a practical matter have rather greater prospects to do so. Aid recipients' choices are made among a huge variety of possible careers, of which only a small handful are sectarian. In this case, the fact that aid goes to individuals means that the decision to support religious education is made by the individual, not by the State.

Further, and importantly, nothing in the record indicates that, if petitioner succeeds, any significant portion of the aid expended under the Washington program as a whole will end up flowing to religious education. The function of the Washington program is hardly "to provide desired financial support for nonpublic, sectarian institutions." *Id.*, at 783; see *Sloan v. Lemon*, *supra*; cf. *Meek v. Pittenger*, 421 U.S. 349, 363 -364 (1975). The program, providing vocational

assistance to the visually handicapped, does not seem well suited to serve as the vehicle for such a subsidy. No evidence has been presented indicating that any other person has ever sought to finance religious education or activity pursuant to the State's program. The combination of these factors, we think, makes the link between the State and the school petitioner wishes to attend a highly attenuated one.

On the facts we have set out, it does not seem appropriate to view any aid ultimately flowing to the Inland Empire School of the Bible as resulting from a state action sponsoring or subsidizing religion. Nor does the mere circumstance [474 U.S. 481, 489] that petitioner has chosen to use neutrally available state aid to help pay for his religious education confer any message of state endorsement of religion. See *Lynch v. Donnelly*, 465 U.S., at 688 (O'CONNOR, J., concurring). Thus, while amici supporting respondent are correct in pointing out that aid to a religious institution unrestricted in its potential uses, if properly attributable to the State, is "clearly prohibited under the Establishment Clause," *Grand Rapids*, supra, at 395, because it may subsidize the religious functions of that institution, that observation is not apposite to this case. On the facts present here, we think the Washington program works no state support of religion prohibited by the Establishment Clause. 5

III

We therefore reject the claim that, on the record presented, extension of aid under Washington's vocational rehabilitation program to finance petitioner's training at a Christian college to become a pastor, missionary, or youth director would advance religion in a manner inconsistent with the Establishment Clause of the First Amendment. On remand, the state court is of course free to consider the applicability of the "far stricter" dictates of the Washington State Constitution, see *Witters v. Commission for the Blind*, 102 Wash. 2d, at 626, 689 P.2d, at 55. It may also choose to reopen the factual record in order to consider the arguments made by respondent and discussed in nn. 3 and 5, supra. We decline petitioner's invitation to leapfrog consideration of those issues by holding that the Free Exercise Clause requires Washington to extend vocational rehabilitation aid to petitioner regardless of what the State Constitution commands or further factual development reveals, and we express [474 U.S. 481, 490] no opinion on that matter. See *Rescue Army v. Municipal Court*, 331 U.S. 549, 568 (1947).

The judgment of the Washington Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Good morning, my name is Carol Simpson. I work for IDEA as a Field Representative and Administrative Assistant, but I am speaking today primarily as a homeschooling parent in a statewide correspondence program. I have seven children, ages 3 to 22, and have been homeschooling for 16 years: 11 of those years as an independent homeschooler and 5 years with IDEA.

The regulations for statewide correspondence programs that have been proposed by the Department of EED seem to me to be clearly in conflict with legislative history and tradition.

Legislative intent toward school choice and innovation has been demonstrated in the charter school law (AS 14.03.250-290) and the part-time school attendance law (AS 14.03.095), both of which encourage wide-ranging school choice options.

- ❖ IDEA was designed to serve a particular constituency; people like me, who were never in any program and had no oversight from any educational institution. IDEA uses a pre-enrollment interview process to assure that parents have carefully considered the commitment required to be successful and to determine if the IDEA program is appropriate to meet their needs. They are directed to their local schools or a more traditional correspondence school like Alyeska Central School if it is apparent that they need more structure than IDEA typically provides. The typical IDEA parent is a traditional homeschooler like me who desires to continue to be their children's primary educator beyond age five and believes strongly in an individualized curriculum that is appropriate for each child's academic level and family values. Over-regulating will drive many of our students back out of the school system, back to homeschooling independently without any input or oversight by a school district.
- ❖ Adding layers of regulation that hold programs like IDEA to a higher standard than any other type of school system in Alaska, including charter schools and in-district correspondence programs, only serves to hinder the very innovation and educational options that the legislature has a history of strongly supporting. Three instances which demonstrate this discrimination are

- 1) the annual application,
- 2) mandating removal of students who do not participate in state mandated tests; and
- 3) requiring testing participation rates within 10% of the state average.

Legislative intent toward school accountability has been demonstrated (AS 14.03.123) by the commitment to a performance evaluation in the areas of reading, writing, and mathematics, as measured by the Benchmarks and Exit Exam.

- ❖ While student participation in testing is important, the proposed regulations include a mandated level of participation in order for the program to continue each year. There is no provision for this kind of mandate within statute and the legislative intent is clearly a focus on test *results* more than participation rates.
- ❖ There is an undue emphasis on what materials are used rather than standards and test results in the proposed regulations. The legislature has indicated that it is the educational concepts being taught that are crucial, not the materials being used to teach these concepts.

Legislative intent toward homeschoolers is demonstrated in the statute (AS 14.30.10) which allows for homeschooling with no regulation, earning Alaska the reputation as the most homeschool-friendly state in the country, and keeping it on the leading edge of progressive education law.

- ❖ The difference between homeschooling on my own and homeschooling within the IDEA system is that I now write a detailed learning plan for each of my children at the beginning of the school year, which is reviewed and approved by my contact teacher. My spending must follow this plan as orders are reviewed by our ordering department for congruence with the plan and to assure that no inappropriate materials are purchased with state funds. I then report progress to my district certified contact teacher twice a year and take my children to the state testing. Additionally, my contact teacher and I communicate many times over the course of the year as she checks on how things are going and I consult with her when I require assistance. I attend IDEA-sponsored workshops designed to teach me skills to be a better

home educator and benefit from the use of a computer and Internet access. Help is readily available and easily accessible whenever I need it. The level and type of monitoring should be determined by the local school district based on such varied components as grade, age, experience and involvement of the home teacher, materials being used, history within the program, past standardized test scores, and other criteria.

- ❖ The latitude given to independent homeschoolers by the legislature has declared loud and clear that parents can indeed be trusted to be responsible when it comes to teaching the appropriate concepts to their children. Regulations requiring certified teacher review of all purchases for students, monthly review of work, and denying the right to use *privately-purchased* materials that may be religious in nature all fly in the face of the respect that has previously been accorded to homeschoolers by the legislature.

Legislative intent has clearly been toward an emphasis on parental authority and local school district control, as exemplified in the homeschool law, charter school law, statutes on duties of local school boards, etc.

- ❖ IDEA has a strong history of a great deal of parental involvement. In fact, I was one of the first employees of IDEA, hired not for my experience with school districts, of which I had none, but because of my years of homeschooling and experience as head of my local home school support group. There is now a Field Representative for each of our five regions, whose primary job is to represent the parents' views to the administration and represent the administration's views to the homeschoolers. Additionally, this one program has five Parent Advisory Committees, which plan community events and serve as additional liaisons between the staff and the parents. Many are active in their local home school groups and rub elbows with other parents every day. The Galena School Board has always been very responsive to the parents and invites the PAC Chairs to meet with them a couple of times a year. Parents are welcomed and encouraged to contact the Galena Board and any of the administrative staff at any time, and they readily do so.
- ❖ The Department of EED has indicated that they wish to require that all funding received by districts for correspondence students