

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86/2

2259 HHESS HB 355 - HB 357 (FILE 1) 2259

BRISTOL BAY AREA HEALTH CORPORATION

P. O. Box 10235
DILLINGHAM, ALASKA 99576

Phone (907) 842-5266
(907) 842-5267

March 3, 1983

Governor Bill Sheffield
Office of the Governor
Pouch A
Juneau, AK 99811



Dear Governor Sheffield,

We are very concerned about the elimination of the State Health Planning and Development function in your F.Y. 84 proposed budget, especially since it would eliminate funding to the Health Systems Agencies (HSAs). They have been very helpful to us as we cannot afford our own professional planners, also they are the most knowledgeable single agencies on whats happening in the health areas (rural and urban) in our State. As such, they eliminate millions of dollars in waste and provide alot of useful help.

We understand you propose a new program "Health Facility Development which includes Development as well as Certification and Licensing components" says Al Adams, Chairman of the House of Representatives Committee on Finance. Since this will be a substantive change, we would like to review your proposal and provide a "users" pros and cons on it. We feel all recipients should be afforded a chance to comment via the legislative hearing (teleconference) process.

Many changes are happening to the way the Federal Government deals with the State, non-profit Corporations, municipalities, boroughs, Native Corporations and individual recipients i.e. Medicare/Medicaid etc.. We need adequate deliberations on your proposed change so as not to cut something out without due consideration. Thank you for your thoughtfulness in an area that affects all of us.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert J. Clark".

Robert J. Clark
Executive Director

cc: Representative Melhoid Bergman
Senator Bob Mulcahy
Representative Al Adams
South Central Health Systems Planning & Development Incorporated

JC:lm

YUKON-KUSKOKWIM HEALTH CORPORATION

P.O. Box 528
Bethel, Alaska 99559
(907) 543-3321

March 2, 1987

Representative Al Adams, Chairman
House Finance Committee
State Capitol
Pouch Y
Juneau, Alaska 99811

Dear Representative Adams:

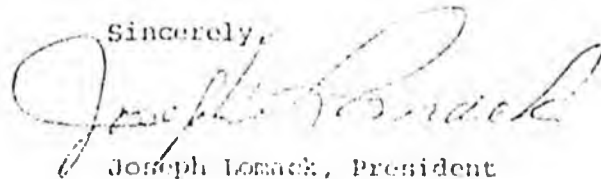
As president of the Full Board of Directors of Yukon Kuskokwim Health Corporation, we have supported our South Central Health Planning & Development, Inc., for several years now. They have provided us with technical assistance in the planning and development of our programs and have provided Board training for us.

We would request that you consider the reinstations of State funding for the three Alaska Health Systems agencies (HSA's) to the level of \$200,000.00 per agency. If the HSA's cannot receive matching funds they could not exist. We feel the HSA's are needed by our Corporations for the value of their expertise in Health Planning, training and their review process we feel is excellent.

Thank you for your consideration in keeping a very worthwhile group of agencies alive to help Alaskans maximize the use of State and Federal funding.

We look forward to your support and thank you for your help in improving the health care of our fellow Alaskans.

Sincerely,



Joseph Tomack, President
YKHC Board of Directors

JL/kc

cc: Representative Tony Vaska
Representative Vern Hurlbert
Representative Jack Fuller
Senator John C. Sackett
Senator Ted Stevens
Alaska Native Health Board
S.C.H.P. & D., Inc.
President Lillie McGarvey

February 24, 1983

Diane Muri
3561 E. 20th
Anchorage, AK 99504

Pouch 5
Juneau, AK 99811

Dear

This is to urge you to reinstate State financing for the continuation of Alaska Health System Agencies (HSA's) in the State budget. The three (3) agencies would require \$200,000 per agency for a total of \$600,000 statewide.

I am requesting this because of the strong role the Health System Agencies play in promoting health and encouraging consumer participation in health care. HSA's develop comprehensive action plans for health and maintain an accurate data base for health assessment and policy decisions. They also provide technical assistance to community groups, especially rural areas, in the area of community organization, needs assessments, planning, and implementation.

The HSA board meetings are a unique and excellent means for both providers and consumers of health care to exchange information on health issues and generate ideas for improvements in the health system and health status of Alaskans. In other words, it is a good communications network.

I have personally found the board meetings and HSA data base very useful to me as a health professional. Once again, I urge your support for the continuation of HSA's.

Sincerely yours,

Diane Muri

ALASKA LUNG ASSOCIATION, Inc.

March 1, 1983

Leo C. Kaye, Executive Director

Representative Albert Adams
Alaska State Legislature
Pouch V
Juneau, AK 99811

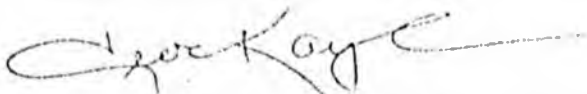
Dear Representative Adams,

This letter is in support of reinstating \$200,000 in the Governor's budget for the continuation of South Central Health Planning and Development (SCHPD). The Alaska Lung Association has taken part in the public hearing process made possible by SCHPD. We have also received information from them regarding legislation or programs affecting our agency. SCHPD has provided technical assistance, conference planning and statistics to the Alaska Council on Smoking or Health, a volunteer organization supported by the Alaska Lung Association.

SCHPD offers services available from no other agency. Without the HSA there will be a duplication of services and an additional expense for the collection and analysis of data.

I urge you to support the continuation of their services.

Sincerely,



Leo C. Kaye, Executive Director
Alaska Lung Association

LCK/vl

cc: SCHPD
Peggy Wilson

SRA Box 812
Anchorage, Alaska 99502
March 9, 1983

Senator Jan Faiks
Pouch V
Juneau, Ak 99811

Dear Senator Faiks:

It has come to my attention that funding for the three regional health planning agencies has been eliminated from the Governor's budget. Our regional agency, South Central Health Planning and Development, Inc. (SCHPD) is the only non-aligned group in the region through which health concerns are identified and addressed. The agency stresses health planning, community assistance, and health promotion through the use of its technical staff, and many volunteers including both consumers and providers in the health field.

The health agency also maintains a current data and information base which is essential to the health planning process. Without SCHPD, other agencies and communities would have to expand their own funding to meet their data collection, community organization, management, and public education needs.

As a health consumer and constituent in your district, I urge you to consider reinstating the health planning agencies in the budget. \$200,000 is needed per agency or \$600,000 statewide. Your support will be appreciated.

Sincerely,


Ronni L. Finneen



Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-4801

BOROUGH MAYOR

March 14, 1983

Representative Tischner
House of Representatives
State of Alaska
Pouch V
Juneau, AK 99811

Dear Representative Tischner:

We understand funding for South Central Health Planning & Development, Inc. and for other health planning agencies has been eliminated from the budget.

Without the funding, these organizations would cease to exist. This would be a loss to the people of South Central area and the State, as well as to us.

South Central Health Planning & Development has been a most valued source of technical assistance. They helped us during our formative stages to develop a rounded community approach to health planning including input from the consumer and the provider. As we began developing a health plan they provided a data base not only locally but with regard to our plan as it related to the region and State.

We need continued access to this information, technical assistance and support. Other areas of the region and the State must have similar needs.

It seems more cost effective to continue an organization who has met their goal of cost containment of health care and whose services are available to all phases of health planners throughout various regions of the State. Even the loss of the data base collected and maintained would be detrimental. Planning is a basic and fundamental activity. Please assist in reinstating the necessary funding.

Sincerely,

Margaret Brown
Margaret Brown, Chairman
Health Planning Council

MB/DR/cn

cc: SCHEP, Inc.

HOLMES JOHNSON CLINIC

Box 1727

Juneau, Alaska 99801
486 1237

March 21, 1983

Milo Fritz, M.D.
Pouch V
Juneau, AK 99811

Dear Dr. Fritz:

I am writing to request support of financing for Health Planning Agencies. I know that consideration is being given to reducing or cancelling their funding. My request comes from my observation as Chairman of the Governor's Review Board on Alcoholism. These agencies have evaluated the alcohol treatment programs in place throughout the State at the request of the Board, and we have found this independent appraisal very useful as a check on the State office which admittedly has a vested interest. They serve as a check and balance on other State health organizations as well. To lose them would, in effect, create a monopoly.

I think it extremely important that their function particularly in the appraisal capacity be ported.

Sincerely,

R. Holmes Johnson, M.D.

RHJ:cm

H

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/

4/15 - Reg fiscal note DOE
" - " " " H&SS

4/19 Spoke w/Keith Lamy re: Constitutionality

- Removing language re: "operation by religious groups"
would stand up constitutionally - effects would be
all non-profit private schools would not be regulated by DOE.

DOE -

- not support a bill that would strip DOE of
health & safety standards

DOE supports:

- exemptions apply only to curricula - not immigration
an example

- What type of tax exemptions are necessary to be non-profit -

4/10 Willenbrock Papers from DOE requested again. from Van Slyke

called:

7/10 310 K State St. / And Home / Marie Lozano /

501c3 - Code - Religious schools, charitable cont.

Religious/Educational

Church: automatically tax exempt

Pub #557

Court won't protect school from tax action

Washington — The Supreme Court today refused to suspend a ruling that could deny a small Baptist school in Mississippi its federal tax exemption because it has failed to recruit blacks. The court turned down an emergency request by Clarksdale Baptist Church, which is seeking to prevent the Internal Revenue Service from proceeding to revoke its tax exempt status. Critics say the Clarksdale Baptist school was founded in 1963 to provide a place for whites trying to avoid attending public schools under orders to integrate. Other new private schools in Mississippi were founded around the same time. The Clarksdale Baptist Church denies that it has ever practiced racial discrimination, and says it would accept black students or teachers if any ever applied.

bench Times 10/3/83

11 states lose Indian rights case

Washington — The Supreme Court today left intact a ruling that 11 states say effectively prevents them from suing Indian leaders in federal court to stop alleged tribal violations of federal law. The court, without comment, turned down an appeal by California, which is seeking a share of the power to regulate fishing and hunting by non-Indians on Indian reservations. Ten other states joined California in pressing for Supreme Court review of the case. They said federal court rulings against California have placed "Indian tribes above the law, in that no remedy is available to restrain them from committing unlawful acts." The Supreme Court has ruled that Indian tribes generally enjoy the same "sovereign immunity" as state governments, meaning that they are shielded from most lawsuits challenging official tribal policies.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

July 28, 1983

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: SCS CS HB No. 357 (Rls)
am S -- Relating to the
Regulation of ~~Private~~...
SCHOOLS.

Dear Mr. Speaker:

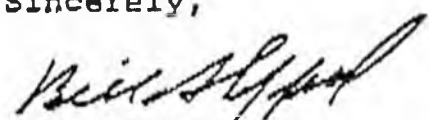
I have today vetoed Senate Committee Substitute for
Committee Substitute for House Bill No. 357 (Rls) am S.

I have taken this action despite substantial pressure from
several organized religious groups, on the grounds that
enacting this legislation serves no discernible public
purpose, and will only benefit select, private interests.

The State of Alaska presently regulates private religious
schools only to a limited degree, primarily in the areas
of health and safety. I have no plans to do more.

Given that early childhood development programs, daycare
and preschool, have become a rapidly growing industry in
the state, I am reluctant to create an exemption for any
group of service providers, without greater justification
for the exemption. Further, the distinction between
religious and non-religious private educational programs
created by this bill moves us perilously close to
constitutional challenge for violation of equal protection
provisions of both the state and federal constitutions.

Sincerely,


Bill Sheffield
Governor

HOUSE ROLL CALL

19

SUBJECT:

	Yea	Nay	Absent
23 ABOOD	✓		
ADAMS <i>not in town over-extended Road</i>			
✓ BARNES	✓		
✓ BETTISWORTH	✓		
✓ BUSSELL	✓		
CATO <i>out of state</i>	✓		
CLOCKSIN			
✓ COWDERY	✓		
DAVIS			
DUNCAN <i>sc</i>	✓		
FLOOD	✓		
✓ FRITZ	✓		
FULLER			
✓ FURNACE	✓		
GOLL		✓	<i>uncertain</i>
GRUSSENDORF <i>??</i>			
✓ HERRMANN	✓		
HURLBERT	✓		
KOPONEN			
LACHER <i>out of state</i>			
LARSON <i>out of state</i>			<i>uncertain</i>
✓ LINDAUER	✓		
LISKA	✓		
MALONE			
MARTIN	✓		
MCBRIDE			
MILLER (D) <i>sc</i>	✓		
✓ MILLER (R)	✓		
PESTINGER	✓		
PHILLIPS			
RINGSTAD	✓		
SHULTZ <i>o</i>			
SZYMANSKI		✓	
✓ FISCHER	✓		
UEHLING	✓		
VASKA			
✓ WARD	✓		
WENDTE			
ZHAROFF <i>needs resp. answer</i>			
# HAYES	✓		

64 Home Numbers

7/11/83

REPRESENTATIVES

<u>Representative</u>	<u>Legislative Office Location</u>	<u>Legis. Phone</u>	<u>Staff</u>
Mitch Abood House State Affairs	500 L St., Suite 310-D	274-2843 274-5941	Carol Horos ^{Home #} 274-8483 Elaine Bales 333-5632
Al Adams House Finance	1024 W. 6th, Suite 204-A/B Room 507, Capitol	274-0615/16 465-3706	Louann Cutler Darla Schnell Marla Berg Elmer Lindstrom
Ramona Barnes House Majority Leader	1024 W. 6th, Suite 201-A/B	276-3176	Jeanne Lovell 293-5773 Jim Wood
Bob Bettisworth (Budget & Audit)	211 Cushman Fairbanks 99701 <i>Anch-Dou Ken = 276-7862</i>	452-3421 452-3471	Mike Dalton (B&A) Steve Frank (B&A) Marilyn Wilson (B&A) Ralph Bennett (Fin) Leta Kaye (Fin)
<i>Bette Cato</i>	<i>835-4568</i>		
Charlie Bussell House Judiciary	1024 W. 6th, Suite 200	274-1441	Joe Brewer Catherine Zalewski
Don Clocksin	1024 W. 6th, Room 204-G	274-4031	
John Cowdery Oil & Gas Committee	500 L, Suite 310-D	278-1521	Shirley Dreas <i>243-7876</i>
Walt Furnace House Labor & Commerce	500 L, Suite 310-D	277-2459	Steve Levi <i>337-2021</i> Diana Smith
Ben Grussendorf	P.O. Box 928, Sitka	747-8459 (h) 747-6276 (Sitka LIO)	
Joe Hayes Speaker of the House	1024 W. 6th, Room 201-D/E	272-3471 <i>OR-278-8222</i>	Jeff Day Neil Phelps-Munson
Adelheid Herrmann Spec. Committee on Fisheries	1024 W. 6th, Room 201-G	<i>276-8994</i>	
Vern Hurlbert	1024 W. 6th, Room 204-B	277-2141	Kay Wallis June Baker
Barbara Lacher	P.O. Box 478, Palmer 99645	376-5865 (h) 376-3704 (msg - LIO)	
Ron Larson	P.O. Box 53, Palmer 99645	745-3826 376-3704 (Mat.-Su LIO)	
John Lindauer	500 L St., Suite 310-A	<i>562-4684</i>	

Szymanski

688-2526 John

John Liska Admin. Regulation Review	Eagle River 99577 (Mary's home)	694-5080	Mary Whitman
Sgt. Pestinger	500 L St., Suite 310-F	274-7681/82	CINDY ERVIN 243-1222 Terry Otness Ed Essa 344-0950
John Ringstad	211 Cushman St.; Fairbanks 99701	452-3252 452-3206	Dave Stancliff
Mae Tischer House HESS Co-Ch	500 L St., Suite 310-G	277-2486	Bill Lovell 243-5773 TRUDIE ALFORD (274-23 HOME
Rick Uehling Spec. Committee on Loans	1024 W. 6th, Room 204-F	274-2441	
Jerry Ward	500 L St., Suite 310-C	277-2479	Linda Cortez 276-0378 Lydia Jones 278-2296
House Minority Democrats	1024 W. 6th, Room 204-G	274-40312	Pat Corbett

CSHB 357(Rls)

CSHB 357(RULES) RECON

Yeas: 28 ✓ Abood, Adams, Barnes, Bassett,
 ✓ Cato, Cowdery, Duncan, Flood, Fritz,
 ✓ Fuller, Furnace, Goll, Hayes,
 Herrmann, Hurlbert, Larson, Lindauer,
 ✓ Liska, Martin, Miller, M.M.,
 Miller, M.W., Opeatinger, Ringstad ✓
 ✓ Szymanski, Fischer, Uehling, Ward,
 ✓ Zharoff

Nays: 9 Clocksin, Davis, Koponen, Lacher,
 Malone, McBride, Phillips, Shultz,
 Wendte

Excused: 3 Bettisworth, Grussendorf, Vaska

Absent: 0

And so, CSHB 357(Rls) passed the House on reconsideration of the vote.

Representative Tischer moved and asked unanimous consent that the following letter of intent be adopted:

"May 24, 1983

offered by
 Representative Mae Tischer

LETTER OF INTENT

HB 357 "An Act relating to the regulation of religious schools."

The House of Representatives recognizes that operating a church school is an integral part of the free expression of religion and that schools operated by religious bodies are quite different from other private schools. Therefore, the purpose of HB 357 is to prevent possible church-state constitutional conflicts by protecting the fundamental rights of religious freedom of parents, children, and church schools in Alaska and, at the same time, to balance the state's interest in assuring that each child receives a good education. The House specifically intends to exempt pre-elementary and nursery programs operated by religious organizations from the general supervision of the Departments of Education and of Health and Social Services.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR



DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

GOLDBELT PLACE
901 WEST 10th STREET
POUCH F
JUNEAU, ALASKA 99811

October 19, 1983

The Honorable Mae Tischer, Chair
Health, Education and Social
Services Committee
500 "L" Street, Suite 310-G
Anchorage, AK 99501

Dear Mae:

Thank you for your various communications on matters related to preschool regulations. In our conversations nearly two months ago, I recall saying that the Department of Education (DOE) would not propose regulations for action by the State Board but that we would proceed with the process and wait for action to clarify the laws and the intent of the Legislature during the forthcoming session. We proceeded on that basis and requested further public comment. We have certainly had that.

The important responsibility for the Legislature in the matter is a clear determination of a public policy for preschool programs, public and private. I know you understand that the Department of Education and the State Board have no interest in developing regulations unless there is a legal basis for such regulations contained in the statutes.

Ernestine Griffin, President of the State Board, and the Department are ready to work with the Legislature at your forthcoming session to define the State responsibility for public and private preschool programs. If your committee has direction or data for us to prepare, we are ready to go to work. There is important work to be done to resolve these matters.

I regret that I was unable to reach you even from Chena Hot Springs by radio telephone. Your staff members were most helpful in our efforts to communicate.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Harold'.

Harold Raynolds, Jr.
Commissioner

cc: Ernestine Griffin, State Board President
Members of the State Board
Richard Luther
Annie Calkins

(8) in cooperation with the Department of Health and Social Services, exercise general supervision over public and private pre-elementary schools and over the educational component of nurseries as defined in AS 47.35.080(4); pre-elementary schools in this paragraph means schools for children ages three through five years when the schools' primary function is educational;

(9) provide accredited elementary and secondary correspondence study programs available to any Alaskan through a centralized office of correspondence study;

(10) accredit private elementary and secondary schools which request accreditation and which meet accreditation standards prescribed by regulation by the department;

(11) review plans for construction of new public elementary and secondary schools and for additions to and major rehabilitation of existing public elementary and secondary schools and, in accordance with regulations adopted by the department, determine and approve the extent of eligibility for state aid of a school construction project begun after July 1, 1978; for the purposes of this paragraph, "plans" include educational specifications, schematic designs, and final contract documents;

(12) provide educational opportunities in the areas of vocational education and training, basic education, and fire-service training to individuals over 16 years of age who are no longer attending school;

(13) administer the grants awarded under AS 14.11.020. (§ 1 ch 98 SLA 1966; am § 2 ch 69 SLA 1971; am § 6 ch 104 SLA 1971; am § 1 ch 190 SLA 1975; am § 6 ch 50 SLA 1977; am §§ 1-3 ch 126 SLA 1978; am § 10 ch 147 SLA 1978; am § 1 ch 86 SLA 1979; am § 24 ch 59 SLA 1982; §§ 1, 2 ch 92 SLA 1982)

Revisor's notes. — A reference to AS 14.11.020 was substituted for a reference to AS 14.07.190 in paragraph (13) by the revisor of statutes under AS 01.05.031 to conform to the renumbering of that section.

Effect of amendments. — The first 1978 amendment deleted "private, and denominational" preceding "schools" near the beginning of paragraph (6), inserted "and private" preceding "schools" in paragraph (7), added the language beginning "the standards for private schools" to the end of paragraph (7), and added paragraph (10).

The second 1978 amendment added paragraph (11).

The 1979 amendment added paragraph (12).

The first 1982 amendment substituted "of" for "and" preceding "new public elementary" in paragraph (11).

The second 1982 amendment substituted "'plans' include" for "a plan" includes" in paragraph (11), inserted "and approve" and "the" preceding "purposes of this paragraph" in the same paragraph, and added paragraph (13).

Stated in Anchorage S

Collateral require const. buildings. 1 A Power of sc physicians, nu 12 ALR 922.

Extent of leg to attendance 477; 63 ALR 8 Kindergarte

Sec. 14.0

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- (12) exerci 1966; am § 1 ch 161 SLA 1

Title 14 Education

Adoption of Agenda ACTION

Approval of Minutes ACTION

Board Comments and Concerns

Public Comments

REPORTS

Commissioner's Report
Finance Report
Subcommittee Reports
Attorney General's Report

84-9 REGULATIONS

4 AAC. 60.009-199 Proposed Adoption of Early
Childhood Program Regulations ACTION

4 AAC. 12.055 Proposed Adoption of Early
Childhood Teacher Certification Regulations ACTION

4 AAC. 12.010(b) and (c) Procedure Governing
Application for Teacher Certification PROMULGATION

4 AAC. 12.010(g) Proposal for Revision of Fee
Structure for Teacher Certification PROMULGATION

4 AAC. 12.010(h) Revision of Requirements
Governing the Issuance of Certification
Endorsements PROMULGATION

4 AAC. 12.020(d), 4 AAC. 12.030(d), 4 AAC.040(c)
Proposal for Elimination of Nonacademic Credit
From the Teacher Certification Renewal Process PROMULGATION

4 AAC. 12.030(a)(2) Proposal for Repeal of
Special Qualifications For Out of State
Applicants for Administrative Certification PROMULGATION

4 AAC. 12.045 Proposal for Amendment of
Provisions for Professional Certificate
Requirements PROMULGATION

4 AAC. 12.060(b)(2) Proposal for Repeal of
Transcript Review by Department Certification
Personnel PROMULGATION

	4 AAC. 12.080(1)-(3) Proposal for Repeal of Nonacademic Credit Approval Process	PROMULGATION
	4 AAC. 12.080(d) Proposed Elimination of the Grace Period for Certification Renewal	PROMULGATION
12:30PM	Recess for Lunch	
1:30PM	Reconvene	
84-10	Board Priorities for FY 85 Budget	ACTION
84-11	Mt. Edgecumbe Project	ACTION
84-12	Teacher Education On Site Review Team Report University of Alaska/Anchorage - Secondary Programs	ACTION
84-13	Consideration of Plan for Drafting of Official Bylaws for State Board of Education	ACTION
	STATE BOARD FOR VOCATIONAL REHABILITATION	
84-14	Appointments to Vocational Rehabilitation Advisory Board	ACTION
	STATE BOARD FOR VOCATIONAL EDUCATION	
84-15	Appointment to Vocational Education Planning Council	ACTION
84-16	Board Review of Proposed Timeline for the Department of Education Career and Vocational Education Plan (K-12, Adult, Postsecondary)	DISCUSSION
84-17	Proposed Criteria for Vocational-Technical Centers	DISCUSSION
84-18	Vocational Education Advisory Council Report	INFORMATION
5:30PM	ADJOURN	

Register , 1983

EDUCATION

4 AAC 60

TITLE 4. EDUCATION.
CHAPTER 60. PRE-ELEMENTARY (EARLY CHILDHOOD) SCHOOL

Register , 1983

EDUCATION

4 AAC 60

SECTION

4	AAC	60.009	Applicability
4	AAC	60.010	(Repealed)
4	AAC	60.019	Certificate Required
4	AAC	60.020	(Amended)
4	AAC	60.030	(Amended)
4	AAC	60.031	Implementation
4	AAC	60.032	Provisions of Certificate
4	AAC	60.039	Provisional Certificate
4	AAC	60.040	(Repealed)
4	AAC	60.049	Special Changes Affecting Certification
4	AAC	60.050	(Amended)
4	AAC	60.051	Certification Renewal
4	AAC	60.059	Waiver of Requirements
4	AAC	60.060	(Repealed)
4	AAC	60.061	Voluntary Certification
4	AAC	60.065	Inspection
4	AAC	60.069	Organization and Administration
4	AAC	60.070	(Repealed)
4	AAC	60.079	Ensuring Care In Emergency
4	AAC	60.080	(Repealed)
4	AAC	60.089	Administrator Qualifications
4	AAC	60.090	(Repealed)
4	AAC	60.099	Staff Qualifications
4	AAC	60.100	(Repealed)
4	AAC	60.110	(Repealed)
4	AAC	60.115	(Amended)
4	AAC	60.119	Environment Requirements
4	AAC	60.120	(Repealed)
4	AAC	60.129	Fire Safety
4	AAC	60.130	(Repealed)
4	AAC	60.139	Sanitation and Environmental Protection
4	AAC	60.140	(Repealed)
4	AAC	60.149	Health Program
4	AAC	60.150	(Repealed)
4	AAC	60.159	Immunizations Required
4	AAC	60.160	(Repealed)
4	AAC	60.169	Nutrition
4	AAC	60.170	(Amended)
4	AAC	60.175	(Amended)
4	AAC	60.180	(Repealed)
4	AAC	60.191	Exceptional Children
4	AAC	60.199	Definitions

ARTICLE 1.

Section

4 AAC 60.009. APPLICABILITY. The provisions of 4 AAC 60.009 - 4 AAC 60.101, apply to pre-elementary schools as defined in 4 AAC 60.199. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.010. REQUIREMENTS. Repealed

Authority: AS 14.07.020

4 AAC 60.019. CERTIFICATE REQUIRED. (a) A person who does not have a certificate issued under 4 AAC 60.009 - 4 AAC 60.191 may not:

- (1) operate a pre-elementary school; or
- (2) advertise or represent that the person offers pre-elementary educational services to children. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.020 is amended to read: EXEMPTIONS. (a) The following programs are exempt from the requirements of 4 AAC 60.009 - 4 AAC 60.199.

- (1) schools operated by the federal government
- (2) programs licensed as day care facilities under 7 AAC 50.120 - 7 AAC 50.275 (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.030. is amended to read APPLICATION FOR A CERTIFICATE OF APPROVAL. (a) An applicant must apply for a certificate on a form provided by the department, and submit all required attachments with the application.

(b) Within 60 days after receipt of a completed application and all required attachments, a department representative will

(1) review the application, confer with the applicant if necessary, and schedule an inspection of the pre-elementary school; and

(2) if the department considers it necessary, request appropriate authorities to verify compliance with applicable fire safety regulations, environmental health regulations, building codes, zoning ordinances, and other state and municipal laws.

(c) If the results of the application review and inspection indicate that the pre-elementary school meets the requirements of 4 AAC 60.009 - 4 AAC 60.199, the department will issue a certificate to the applicant.

(d) If the department finds that the program does not comply with the requirements of 4 AAC 60.009 - 4 AAC 60.199, the department will deny a certificate, and provide the applicant with reasons in writing for the denial, and notify the Department of Health and Social Services, Division of Family Services of the status of the program. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.031. IMPLEMENTATION. (a) All currently certified pre-elementary schools in existence in Alaska upon the effective date of 4 AAC 60.009 - 4 AAC 60.199 must complete an application for a certificate and submit it to the department no later than 12 months after the effective date of 4 AAC 60.009 - 4 AAC 60.199. (Eff. / / , Reg.) *Montessori!*

(b) All currently operating, non-certified pre-elementary schools must complete an application, with required attachments, and submit it to the department within 120 days of the effective date of 4 AAC 60.009 - 4 AAC 60.199.

Authority: AS 14.07.020

4 AAC 60.032. PROVISIONS OF CERTIFICATE. (a) A certificate issued in accordance with 4 AAC 60.009 - 4 AAC 60.191 will state

(1) the period for which it is in effect;

(2) the name of the person, board, or school district certified to operate the pre-elementary school;

(3) the address of the person, board, or school district certified to operate the pre-elementary school;

(4) the maximum number of children who attend the program at any one time;

(5) ages of children who may enroll in the program;

(b) The certificate must be displayed in the pre-elementary school in plain view of the public. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.039. PROVISIONAL CERTIFICATE. (a) The department will, in its discretion, issue a provisional certificate to a pre-elementary school whose completed application of certification has been approved by the department and whose final certification is dependent upon the on-site review of the program. The pre-elementary school may operate with a provisional certificate while department representative completes the on-site review and a certificate is granted or denied. A provisional certificate may not be issued if the department has reasonable cause to believe there is a standard not met which may mean substantial threat to life or safety of the children enrolled. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.040. DENIAL OF APPROVAL; HEARING. Repealed.

4 AAC 60.049. SPECIAL CHANGES AFFECTING CERTIFICATION. (a) The certificate holder shall report an anticipated change in any of the following to the department as early as possible but not more than 90 days before the change occurs.

(1) a change in the administrator of the program;

(2) a change in the name of the person certified to operate the facility;

(3) a change of the location of the facility;

(4) a change in the name of the pre-elementary school;

(5) a substantial change in the program offered; or

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(6) a substantial change in the building housing the pre-elementary school.

(b) A certificate may not be transferred to a different location or owner.

Authority: AS 14.07.020

4 AAC 60.050. is amended to read DURATION OF APPROVAL. (a) A certificate issued under 4 AAC 60.009 - 4 AAC 60.191 is valid for a period of two years from the date of issuance.

(b) A certificate may be modified, revoked, or suspended for failure to comply with the requirements of 4 AAC 60.009 4 AAC 60.199 or other statutes and regulations covering the health, safety and welfare of students and staff.

(c) If the department finds that the holder of a certificate does not meet the requirements of 4 AAC 60.09 - 4 AAC 60.119, the department may revoke, modify or suspend the certificate subject to 4 AAC 60.039. The holder of the certificate may request a hearing before the division director or the division director's designee within 15 days after receipt of the accusation or statement of issues in accordance with AS 44.62.360 and AS 44.62.370.

(d) Following the hearing, the hearing officer shall prepare the findings and recommend appropriate action to the commissioner. The commissioner shall review the hearing officer's recommendations and determine what action shall be taken. The decision of the commissioner is subject to review in the manner provided by AS 44.62.560. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.051. CERTIFICATE RENEWAL. (a) Upon request, the department will provide the certificate holder with a renewal application form at least 60 days before the expiration of the certificate holder's existing certificate.

(b) The certificate holder shall submit the completed renewal application to the department at least 30 days before the expiration of the existing certificate; however, the department will, in its discretion, waive the requirements of this subsection if it determines there is good cause for the waiver.

(c) The department will, in its discretion, conduct a review and take appropriate action within ten days before expiration of the existing certificate.

(d) If the department cannot complete the review within the period set out in (c) of this section, it will issue the applicant a provisional certificate effective until completion of the department's review. (Eff. / / , Reg.)

(e) The department will not renew a certificate if there is a revocation action pending.

Authority: AS 14.07.020

4 AAC 60.059. WAIVER OF REQUIREMENTS. (a) An applicant for a waiver must apply in writing to the department. The application must include

(1) a statement of the requirement for which the waiver is requested;

(2) an explanation of the reasons why the requirement cannot be satisfied; and

(3) a description of the alternative method proposed to satisfy the purpose of the requirement for which the waiver is requested.

(b) The department will, in its discretion, waive a requirement of 4 AAC 60.009 - 4 AAC 60.199 if an alternative method of satisfying the purpose of the requirement is established.

(c) The department will not grant a waiver, until the appropriate municipal or state authority have reviewed a request for a waiver involving fire safety, environmental health, or other municipal or state requirements within their jurisdiction.

(d) A waiver granted under this section is effective for the time specified on the certificate. The commissioner will review a waiver upon the termination of the waiver and will, in his discretion, renew the waiver.

(e) The department will answer a request for a waiver in writing within 30 days. (Eff. / / , Reg.)

Authority: AS 14.07.020

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4 AAC 60.060. DISPLAY OF CERTIFICATE. Repealed.

4 AAC 60.061 VOLUNTARY CERTIFICATE. (a) A pre-elementary school for which a certificate is not required under 4 AAC 60.009 - 4 AAC 60.199 may apply for a certificate. The department will, in its discretions, issue a certificate if it determines that the pre-elementary school satisfies the requirements of 4 AAC 60.009 - 4 AAC 60.199. (Eff. / / , Reg.)

(b) A licensed day care facility applying for certification as a pre-elementary school may submit in writing to the department a copy of its current day care license, and the following:

- 1) Philosophy of education;
- 2) Program educational goals and objectives;
- 3) Samples of daily schedules or lesson plans;
- 4) Provisions for parental involvement in program;
- 5) Child progress records.

The department will review the information and if appropriate, issue a voluntary certificate to the applicant.

Authority: AS 14.07.020

4 AAC 60.065 INSPECTION. (a) The department shall schedule and conduct on-site inspections to determine compliance with regulations in 4 AAC 60.009 - 4 AAC 60.199.

(b) If a program which the department suspects is a pre-elementary school has not applied for a certificate and refuses to permit an inspection, the department may seek an administrative search warrant. (Eff. / / , Reg.)

(c) An applicant or certificate holder shall permit certification representatives to inspect the pre-elementary school at any time during the facility's hours of operation. In carrying out these visits, certification representatives will call upon governmental agencies for appropriate assistance. Applicants or certificate holders shall cooperate in these visits by providing access to their facilities, records, children and staff. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.069. ORGANIZATION AND ADMINISTRATION. (a)

The name, address and telephone number of the person or organization with the legal responsibility and the administrative authority for operating the pre-elementary school must be provided to the department and, if the facility is operated by an association, corporation or other entity, the name, address, and telephone number of each member of its board or governing body must also be provided to the department

(b) The individual or governing body with the legal responsibility for the pre-elementary school must designate an administrator also exercises responsibilities for the daily management of the program.

(c) Specific responsibilities and duties of the governing body must be written and communicated to the administrator of the pre-elementary school and staff when applicable.

(d) A pre-elementary school shall:

(1) provide an educational program and facility which meets the requirements of 4 AAC 60.009 - 4 AAC 60.191.

(2) provide the department with a description and the name of the owner of the land and building in which the pre-elementary school is located.

Why?!?

(3) ensure the confidentiality of records and information pertaining to an individual child or the parents, except as required by program staff in working with the child and the family, or when a release of information form is signed by the parents.

(4) maintain current individual records including but not limited to

(A) individual child emergency information records, maintained on forms provided by the department unless prior department approval is given to use alternate forms.

(B) staff employment and health records;

(C) child attendance records.

(D) child progress records;

You can find red-top almost anywhere -

(5) maintain bodily liability insurance (including transportation coverage if applicable) in an amount not less than \$100,000 per child, \$300,000 per accident with a company authorized to write insurance policies and must contain the following endorsement:

"In the event of cancellation or non-renewal of this policy, the company agrees to give 30 days prior notice to the Department of Education, Pouch "F", Juneau, Alaska 99811."

(6) have written materials covering, admission policy, nondiscrimination, provisions which can be made for the special needs of individual children, program philosophy, program goals and objectives, samples of daily schedules or lesson plans, behavior management policies, provisions for parental involvement, enrollment requirements and procedures, fees and payment arrangement plans, insurance coverage, transportation arrangements, parental permission for trips and related activities outside the classroom, cold weather outdoor play policies, cold weather closure, child abuse reporting, illness or accident policies, disclosure of information, and notifications of changes in program; these materials must be presented and explained to parents at the time of enrollment or at the time of the change, and a copy filed with the department. (Eff. / / , Reg.)

Hog-wash!

Authority: AS 14.07.020

4 AAC 60.070. CERTIFICATE OF APPROVAL. Repealed.

4 AAC 60.079). ENSURING CARE IN EMERGENCY. (a) A pre-elementary school must have a plan for the complete evacuation of all children including the handicapped in case of fire or other disaster. The plan must include provisions for accountability for each child until released to an appropriate authority. The plan must be written and posted. Staff must be aware of the plan, and the staff must hold evacuation drills at least once every month.

(b) Provision must be made in all pre-elementary school facilities for emergency electrical lighting by generator or battery power for use in case of power failure.

\$\$\$

(c) Pre-elementary school facilities shall have a telephone or radio-phone if that service is locally available. Emergency telephone numbers must include fire, police, physician, poison control, and must be conspicuously posted on or adjacent to the telephone.

(d) In all pre-elementary school facilities, first aid supplies appropriate to the size of the facility must be maintained and readily available for use at all times.

(e) A facility must have at least one staff member with a current first aid certificate on duty at all times unless first aid courses are not regularly available in the community in which the facility is located. If courses are not regularly available, the pre-elementary school must enroll one or more employees in the first available first aid course offered in the community to meet this requirement.

(f) A staff member, who, in the performance of duties, has cause to believe that a child has suffered harm as a result of abuse or neglect shall immediately report the harm to the nearest office of the Department of Health and Social Services. If the staff cannot reasonably contact the nearest office of the Division of Family and Youth Services of the Department of Health and Social Services, and immediate action is necessary for the well-being of the child, the administrator shall make the report to a peace officer.

(g) A pre-elementary school must have a written emergency back-up staffing plan for periods when only one staff member is on duty.

(h) When a child is left in the pre-elementary school after the closing of the program without contacting the staff, or making alternative arrangements for the care of the child, the administrator shall report the child to the nearest office of the Department of Health and Social Services. (Eff. / / , Reg.)

*Changed
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better*

Authority: AS 14.07.020
AS 47.17.

4 AAC 60.080. INSURANCE. Repealed.

4 AAC 60.089. ADMINISTRATOR QUALIFICATIONS. (a) The administrator of a pre-elementary school is responsible for the screening, scheduling and supervising of all staff, volunteers and others who provide services in the pre-elementary school, and for designating a staff member to be in charge of the facility in the administrator's absence.

(b) The administrator of a pre-elementary school must be at least 19 years of age.

(c) The administrator shall furnish the names, addresses, and telephone numbers of three persons unrelated to the administrator, who could provide character references to the department with the certificate application; the references, one of which must be from a supervisor in previous work experience, shall attest to the character and reputation of the administrator and to the management and interpersonal skills which enable the administrator to work successfully with children, staff, and parents. ???

(d) An individual may not be the administrator of a pre-elementary school if the individual is under indictment or has been convicted of a felony or has had a child adjudicated as a child in need of aid within the last five years. The department will require a release to review law enforcement records for each administrator. In this subsection, "child in need of aid" means a child who has been adjudicated a dependent child under AS 47.10.010 or under a similar statute in another state or jurisdiction.

(e) The administrator must also meet the staff qualifications in 4 AAC 60.099. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.090. RECORDS. Repealed.

4 AAC 60.099. STAFF QUALIFICATIONS. (a) A staff member shall possess tuber. clearance before contact with children in a facility.

(b) A staff member, excluding parent classroom volunteers, must furnish the names, addresses, and telephone numbers of three positive references unrelated to the staff member, who will attest to the ability of the applicant to meet the qualifications of this section.

(c) A staff member must have reached the age of 18 to be counted toward meeting the staff-to-child ratio requirements. However, persons aged 14 and older may be employed as staff members and counted toward staff-to-child ratio requirements if he or she:

(1) works under the close supervision of an adult staff member;

(2) constitute no more than one third of the total staff; and

(3) is not placed in sole charge of a group of children in a classroom;

(4) is enrolled in or has completed a training program in early childhood education or another related field, or have demonstrated competence to an administrator.

(d) A staff member must be able to

(1) provide children with a variety of learning and social experiences appropriate to their ages;

(2) recognize and act against hazards to health and physical safety.

(e) The administrator shall provide an orientation for a new employee within the first month of employment, including:

(1) administrative procedures, program goals and objectives and description of state regulations;

(2) specific written personnel policies including written job responsibilities;

(3) crisis management, duties to be carried out in an emergency, and emergency and safety procedures;

(4) acceptable behavior management techniques, outlined in the pre-elementary school's discipline policy;

appropriate resources to carry out the assigned responsibilities. (Eff. / / , Reg.)

Authority: IS 14.07.020

4 AAC 60.100. PHYSICAL EXAMINATIONS FOR CHILDREN. Repealed.

4 AAC 60.110. Repealed.

4 AAC 60.115. is amended to read STAFF. (a) A facility must have sufficient personnel to ensure that the children are never left without supervision by a responsible staff member.

(1) there must be one staff member for every ten children between three and five years of age;

(2) there must be one staff member for every fifteen children between five and six years of age;

(b) In a facility where there are more than ten children present, there must be a minimum of two staff members on the premises.

(c) In a pre-elementary school, only a staff member who spends at least 75 percent of his or her working time in direct contact with children will be counted in meeting staff-to-child ratios. (Eff. / / , Reg.)

*Montessori
is presently
1 to 20*

Authority: AS 14.07.020

4 AAC 60.119. ENVIRONMENT REQUIREMENTS. (a) A pre-elementary school facility must have sufficient indoor and outdoor space in relation to the number and ages of children to accommodate the physical safety and the developmental needs of children served. Satisfactory compliance with this subsection requires that:

(1) there be a minimum of ¹¹35 square feet of indoor space per child capacity used for the care of children, exclusive of hallways, bathrooms, lockers, closets, laundry and furnace rooms, and the kitchen;

(2) there be at least 75 square feet per child of outdoor play space for the maximum number of children on the playground at any one time. Where outdoor play space is not available at the facility, parks or other outdoor facilities that are easily accessible may be used.

(b) A pre-elementary school must have appropriate storage and work space for children and staff, convenient to the areas of use, to accommodate the following functions:

(1) record storage and administrative functions;

(2) food preparation and serving, if applicable;

(3) meeting space for staff;

(4) storage of program materials and resources for staff and parents;

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EDUCATION

4 AAC 60.120

4 AAC 60.140

(5) storage of repair and maintenance supplies.
(Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.120. RECOGNITION OF SPECIAL NEEDS. Repealed.

4 AAC 60.129. FIRE SAFETY. (a) The building housing a pre-elementary school must meet the standards for buildings and life safety contained in 13 AAC 50.010 - 13 AAC 50.030 and 13 AAC 55.010-13 AAC 55.150. Copies of documents indicating satisfactory compliance with standards must be filed with the department before the issuance of a certificate.

(b) When the department receives a certification application from a pre-elementary school and when any new construction or remodeling is completed, a fire inspection of the premises must be made by the fire marshal or his or her local designee to determine conformity with existing safety standards. Subsequent annual fire inspections may be required by the department. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.130. DISASTER PLAN. Repealed.

4 AAC 60.139. SANITATION AND ENVIRONMENTAL PROTECTION. (a) Pre-elementary school facilities must meet applicable standards for sanitation and environmental protection set out in 18 AAC 30.800 - 18 AAC 30.890.

(b) When the department receives a certification application from a pre-elementary school or when any new construction or remodeling is completed, an environmental health inspection by the Department of Environmental Conservation or its local designee to determine conformity with existing standards must be made. Copies of documents indicating satisfactory compliance with standards must be filed with the department before the issuance of a certificate. Subsequent annual inspections shall be required by the department. (Eff. / / , Reg.)

*Duplicates
Local inspections*

Authority: AS 14.07.020

4 AAC 60.140. FACILITY INSPECTIONS. Repealed.

4 AAC 60.149. HEALTH PROGRAM. (a) Pre-elementary school staff shall not administer medicines or drugs to a child except with written permission of the child's parent and physician or other medical authority. In the case of prescription medicine, a prescription label with the medical authority's name, the child's name, and a recent date may be accepted as showing that the drug may be administered to the child. Medicines or drugs kept at the pre-elementary school for a child must be clearly marked with the child's name and the dosage, and must be inaccessible to children.

(b) A pre-elementary school must provide a place where a tired, ill, injured, or upset child may rest or play quietly, apart from other children, yet under adult observation. Ill children need not be sent home as a routine policy, but may be cared for at the pre-elementary school at the administrator's discretion and with the concurrence of the parents.

(c) If a child appears to be more than moderately ill or a communicable disease other than a cold is indicated, the child must not be allowed to expose other children to the illness and must be isolated in a separate room under adult observation until appropriate arrangements are made. Staff members shall inform parents when their children have been exposed to illness or communicable disease.

(d) Children under age six, who attend a pre-elementary school for periods longer than four hours must have a time and place to lie down and sleep, or rest quietly. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.150. CHANGES IN MAJOR WRITTEN POLICIES, PLANS, PROGRAMS. Repealed.

4 AAC 60.159. IMMUNIZATIONS REQUIRED. (a) The administrator of a pre-elementary school shall maintain evidence of current immunization, or the exemption permitted by subsection (b)(1), for each child in attendance. This evidence must be obtained from the child's parent or guardian upon admission, and show that the child has received or has begun and is continuing to receive immunizations appropriate to age as prescribed in the Alaska Division of Public Health's schedule for active immunization or that the child is exempt from immunization under (b) of this section. Satisfactory compliance requires that each child's health record contain evidence of immunization or evidence of exemption. Evidence of immunization must include

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(1) the name of the health service provider, and the date of immunization against diphtheria, tetanus, polio, measles, rubella, and, if the child is less than six years of age, pertussis; and

(2) valid immunization certificates, which are limited to

(A) an international immunization certificate; or

(B) a statement by a physician listing the date each required immunization was given; or

(C) a copy of a clinic or health center record listing the date each required immunization was given.

(b) Evidence of exemption of immunization must include

(1) a signed affidavit by a doctor (M.D.) or osteopathy (P.O.) licensed in Alaska, attesting that immunizations would, in his or her professional opinion, be injurious to the health of the child or members of the child's family or household; or

(c) A pre-elementary school in a community where regular medical services are not available on at least a weekly basis may provisionally admit a child who does not have the required immunizations for a reasonable period of time, but for no longer than 90 days. Provisional admissions must be reported to the communicable disease control section of the Division of Public Health of the Department of Health and Social Services, which shall then determine that the required immunizations are completed during the provisional period if the child is to be admitted for full time attendance.

(d) A pre-elementary schools may not admit a child who does not comply with the requirements of this section. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.160. NONDISCRIMINATION. Repealed.

4 AAC 60.169. NUTRITION. (a) To ensure adequate nutrition and promote good eating habits and attitudes, a pre-elementary school must ensure that

(1) at least one nutritious meal is offered to each child in the program for five hours per day or more; meals may be provide by the program or the parents or guardians;

(2) a snack is offered between breakfast and lunch and between lunch and dinner;

(3) with all snacks and meals offered, the National Academy of Science's Recommended Dietary Allowances, 9th Ed. 1980*, is met.

(b) Vitamins and mineral supplements may be provided to a child only with written parental permission, and only in dosage indicated by.

(c) Children may be encouraged but may not be forced to eat. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.170. is amended to read PROGRAMMATIC REQUIREMENTS OF THE PRE- ELEMENTARY SCHOOLS. (A) The educational program conducted in a pre-elementary school must provide pre-planned experiences which promote the individual child's physical, emotional, social and intellectual growth. Satisfactory compliance of this section requires that:

(1) staff members generally follow a written schedule of daily activities based on program's philosophy, goals and objectives. The program must provide a balance of quiet and active, group and individual, indoor and outdoor, teacher-directed, and child-initiated activities, as well as adequate time for meals, snacks, sleep, and toileting according to individual needs, as appropriate. The daily schedule must include:

(A) opportunities for individual self-expression in conversation, imaginative play, art, and creative expression;

(B) vigorous physical activities and gross motor activities, both indoors and outdoors, weather permitting.

*EDITOR'S NOTE: This document is available from book stores or the division of family and youth services, Department of Health and Social Services.

Who says what is satisfactory: the school? the child? the Department?

(C) opportunities for intellectual and social development through use of a variety of books, games, toys, crafts, puzzles, blocks, and other activities and materials.

(2) the amount and variety of materials and equipment available, and its arrangements and use, must be appropriate to the developmental needs of the children and

(A) the quantity of materials and equipment is sufficient to avoid excessive competition and long waits by children;

(B) individual storage areas must be accessible to each child for storage of his own belongings;

(C) furniture and equipment must be durable and safe and developmentally appropriate;

(3) staff members may not use any form of corporal punishment unless approved in writing by the parent or guardian of the child and they may not use any other technique which is humiliating, cruel, shaming, or otherwise damaging to the child. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.175. is amended to read TRANSPORTATION. (a) A pre-elementary school must provide means for transporting children in case of emergency.

(b) A vehicle used in transporting children must be licensed in accordance with state law.

(c) A staff member of the pre-elementary school or other person acting on behalf of the program operating a vehicle for the purpose of transporting children shall be properly licensed to operate that class of vehicle according to state law.

(d) A pre-elementary school must ensure that there is prudent supervision in a vehicle used by the program to transport children, including but not limited to, use of seat belts, and prohibit riding in the back of open pickup trucks and other similar open vehicles. (Eff. / / , Reg.)

Authority: AS 14.07.020

*Who or how
is this to
determine
"appropriate"
"sufficient"*

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4 AAC 60.180. DEFINITIONS. Repealed.

4 AAC 60.191. EXCEPTIONAL CHILDREN. In accordance with AS 14.30.180-350, pre-elementary schools shall cooperate with school districts in identifying exceptional children between the ages of three and five. (Eff. / / , Reg.)

Authority: AS 14.07.020

4 AAC 60.199. DEFINITIONS. In AAC 60.009 - AAC 60.191, unless the context requires otherwise

(1) "administrator" means the person 19 years of age or older, delegated the responsibility for the daily management of the pre-elementary school;

(2) "board" means the governing body of the program;

(3) "certificate" means a certificate of approval issued to the pre-elementary school from the Department of Education;

(4) "certification representative" means a representative employee of the Department of Education given the responsibility to conduct reviews and on-site inspections of pre-elementary schools to determine compliance with this chapter;

(5) "commissioner" means the Commissioner of Education;

(6) "department" means the Department of Education;

(7) "division director" means the director of the Division of Educational Program Support;

(8) "exceptional children" means children who are handicapped or gifted;

(9) "facility" means the administration, program and physical plant of a program calling itself a pre-elementary school.

(10) "gifted" means exhibiting outstanding intellect, ability or creative talent within the meaning of 4 AAC 52.130;

(11) "guardian" means an individual who is appointed by a court to manage the affairs of another person;

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October 19, 1983

The Honorable Mae Fischer, Chair
Health, Education and Social
Services Committee
500 "L" Street, Suite 310-G
Anchorage, AK 99501

Dear Mae:

Thank you for your various communications on matters related to preschool regulations. In our conversations nearly two months ago, I recall saying that the Department of Education (DOE) would not propose regulations for action by the State Board but that we would proceed with the process and wait for action to clarify the laws and the intent of the Legislature during the forthcoming session. We proceeded on that basis and requested further public comment. We have certainly had that.

The important responsibility for the Legislature in the matter is a clear determination of a public policy for preschool programs, public and private. I know you understand that the Department of Education and the State Board have no interest in developing regulations unless there is a legal basis for such regulations contained in the statutes.

Ernestine Griffin, President of the State Board, and the Department are ready to work with the Legislature at your forthcoming session to define the State responsibility for public and private preschool programs. If your committee has direction or data for us to prepare, we are ready to go to work. There is important work to be done to resolve these matters.

I regret that I was unable to reach you even from Chena Hot Springs by radio telephone. Your staff members were most helpful in our efforts to communicate.

Sincerely,

Harold Reynolds, Jr.
Commissioner

cc: Ernestine Griffin, State Board President
Members of the State Board
Richard Luther
Annie Calkins

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Alaska State Legislature

House

JUNEAU ALASKA

October 21, 1983

FOR IMMEDIATE RELEASE
Contact: Rep. Mae Tischer
277-2486

ANCHORAGE - A public hearing scheduled for October 24 concerning proposed regulations of pre-school education was postponed indefinitely by Rep. Mae Tischer.

Tischer, chairman of the House Health, Education, and Social Service Committee, said she is postponing the meeting because the proposed regulations have been "pulled back" by Harold Reynolds, commissioner of the Department of Education.

Tischer said she has been assured that Reynolds will not present the proposed regulations to the state education commission at its upcoming meeting in Anchorage on October 31 and November 1.

But Tischer stressed, "I'm not cancelling the hearings, just postponing them. The commissioner has decided to pull back these regulations, but I don't know for how long."

The Anchorage Republican credited a large public outcry against the regulations for helping force Reynolds to reconsider his stance on the regulations.

"The public outcry against the regulations has been overwhelming," Tischer said. "I've been told that the governor, commissioner Reynolds, and the state board of education have received over 5,000 letters of protest. And I don't know how many telephone calls they've received.

"It seems very clear to me that the people have spoken," Tischer added.

More than 700 people attended a committee meeting in Anchorage on October 21, with most of those protesting against the proposed regulations.

However, Tischer spoke with Gov. Sheffield on Friday, October 21, and was told that the governor was also concerned about the proposed regulations.

"The governor said that sometimes in the bowels of government this happens," Tischer said.

Tischer said she and Sen. Jan Faiks, R-Anchorage, are scheduled to meet with Sheffield within the next week in an attempt to permanently resolve the problem.

Last session, House Bill 357 was overwhelmingly approved by both the House and Senate, but was then vetoed by Sheffield. House Bill 357 would have allowed the Department of Education to have sole authority to supervise pre-elementary schools, but would have prohibited the state licensing and supervision over the educational component of religious pre-schools that are non-profit and do not receive state or federal funding.

After the veto, Commissioner Reynolds proposed additional regulations for religious pre-schools.

"The public is now calling for a veto override," Tischer said. "The House passed it by a 28-9 vote and the Senate voted 18-2 in favor of the legislation. It was a very non-partisan issue.

"Yet, Reynolds says he now wants to wait for a message next session to see how the legislature deals with this issue. That's what the department of education told us last session. These response to that was passage of House Bill 357.

"What type of response does he want, a 20-0 and 40-0 vote? I think the legislature - and the public - have made their feelings very clear."

#

STATE OF ALASKA

DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

GOLDBELT PLACE
801 WEST 10th STREET
POUCH F
JUNEAU, ALASKA 99811

October 12, 1983

The Honorable Joe L. Hayes
Speaker of the House
1024 West 6th, Room 201 C/E
Anchorage, Alaska 99501

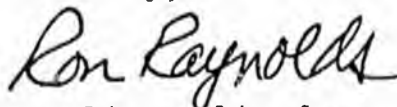
Dear Mr. Speaker:

Thank you for your letter inquiring about the promulgation of regulations for preschools. The questions concerning preschool regulations arise because of the veto of House Bill 357 by Governor Sheffield. The matter of legislative action and intent will remain unclear until a resolution of the issues can be worked out during the next legislative session.

Ernestine Griffin, President of the State Board of Education, and members of the Board plan to work closely with the Legislature and the Department of Education to clarify the intent of the Legislature and the Governor on matters related to preschools, both public and private.

No regulations concerning preschools will be enacted until statutes and legislative intent are clarified. You may be sure that ample opportunities will be provided for public input, if and when preschool regulations are developed pursuant to statutes.

Sincerely,



Harold Reynolds, Jr.
Commissioner

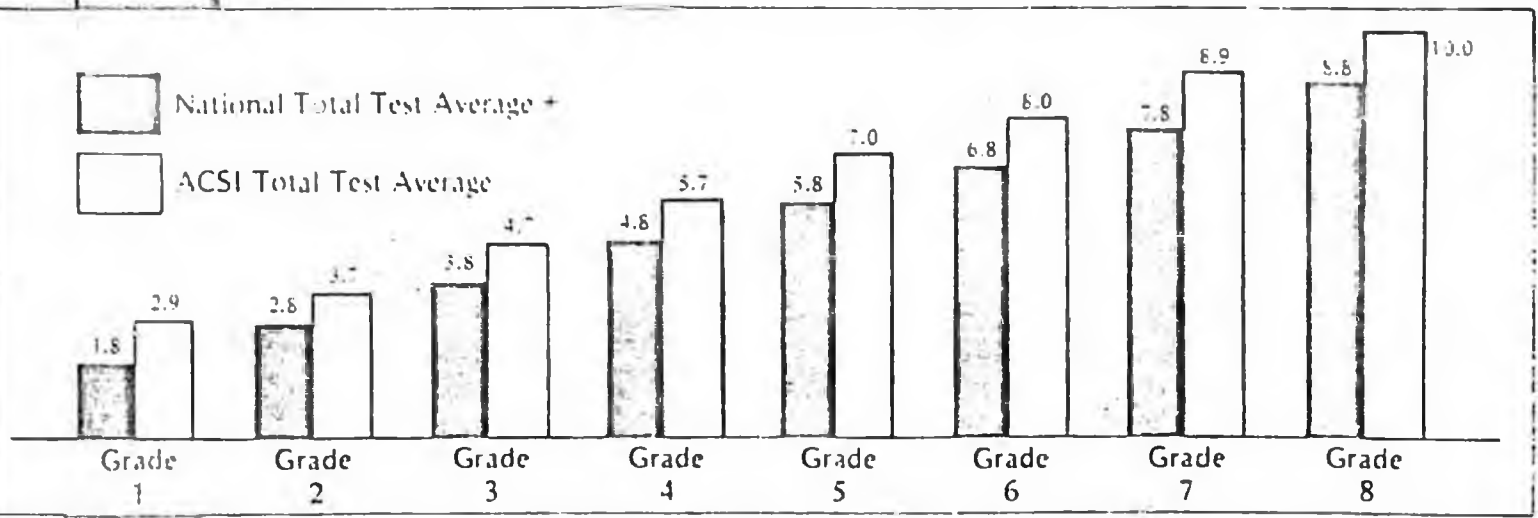
cc: Ernestine Griffin
State Board Members
Richard Luther
Annie Calkins
Steve Hole
Alison Elgee

ACSI students score higher than the National Average!



1981-82 School Year

Year after year testing shows that ACSI students score higher than the National Average at every grade taught.



1st

graders are 11 months *above* the National Average

2nd

graders are 9 months *above* the National Average

3rd

graders are 9 months *above* the National Average

4th

graders are 9 months *above* the National Average

5th

graders are 12 months *above* the National Average

6th

graders are 12 months *above* the National Average

7th

graders are 11 months *above* the National Average

8th

graders are 12 months *above* the National Average



ACSI students are compared to some 225,000 students that were carefully selected to represent average students across the United States (1973). The figures represent the average (median) of all tests at each grade level. The test used was the 1973 Stanford Achievement Test, Form A.

+ TOTAL TEST INCLUDES:

- | | | |
|-------------------|----------|----------------|
| vocabulary | math | social science |
| reading | spelling | science |
| word study skills | language | listening |

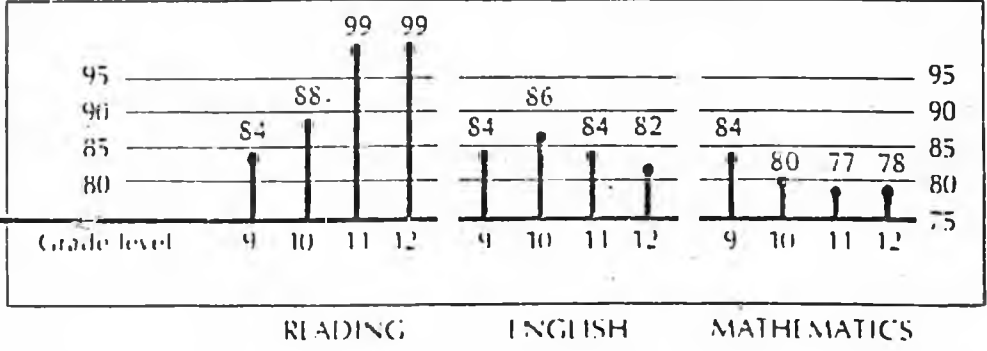
What about ACSI HIGH SCHOOL students? 1981-82 School Year

How do they compare?

ACSI PERCENTILE RANKS *

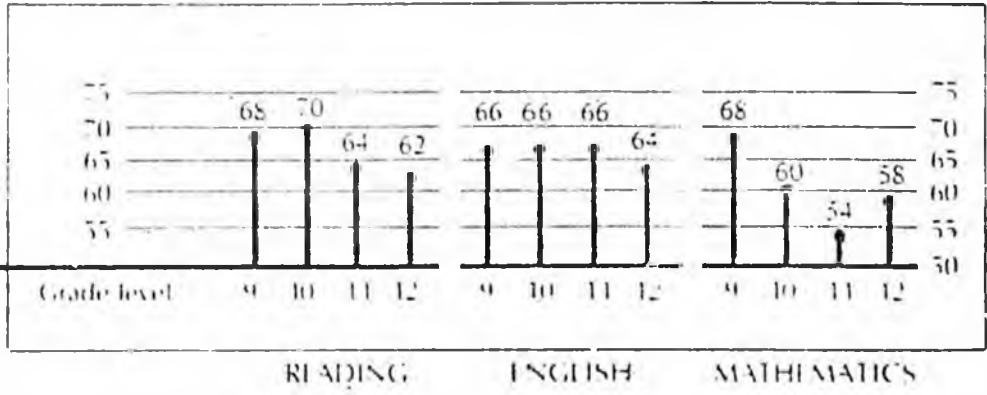
TOP QUARTER
OF THE
NATIONAL GROUP

75
National Average
75th percentile



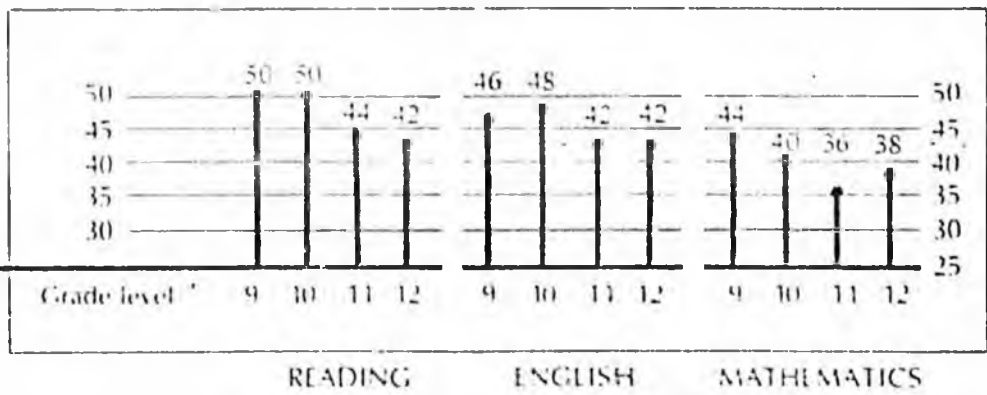
NATIONAL
AVERAGE

70
National Average
50th percentile



BOTTOM QUARTER
OF THE
NATIONAL GROUP

25
National Average
25th percentile



This indicates the relative standing of ACSI students in comparison with students of the same grade status in the National Norm Group. For example, a score of 70 means the ACSI students equaled or exceeded 70% of the National Group that took the test.

HOUSE HESS
COMMITTEE MEETING
AGENDA

DATE: May 13, 1983

TIME: 1:00 p.m.

I. Call Meeting to Order

- A. Note Committee Members Present
- B. Welcome Those Observing
- C. Remind those wishing to testify to sign up, and those giving testimony to speak up and state their names.

II. Announce Legislation Under Consideration:

HB 357 An act relating to the regulation of religious
schools. STATEWIDE TELECONFERENCE

Other notes or reminders:

FULL CALENDAR NEXT WEEK

- HB 357/SB 261: Legislation relating to the regulation of private, non-profit, religious schools which are exempt from federal tax and do not receive state or federal funding.
- Sec. 1: Such schools will self-regulate the educational component (curriculum, text books, class schedules, kinds of toys, quantities of materials etc.) of their pre-elementary programs.
- Sec. 2: Legislation relating to such schools is deleted from present statutes and reintroduced under new statutes.
- Sec. 3: A policy statement declaring the right to freedom of religion guaranteed by the constitution of the United States and the state of Alaska.
- Sec. 4: Repealing the statute which authorizes the state to grant diplomas to 8th grade graduates.
- Sec. 5: Such schools will, at least once a year, submit to a nationally standardized test for students attending grades one, three, six and nine.
- Sec. 6: Such schools will make available regular monthly attendance reports and annual reports. Such schools will operate on a regular schedule at least nine calendar months of the year.
- Sec. 7: Such schools who comply with this chapter are not subject to any other provision of law relating to education except requirements of law respecting fire, safety, sanitation, immunization and physical exams.
- Sec. 8: Such schools will administer their own program of education at the elementary, secondary and adult levels.

NOTE: Statues governing health requirements are not affected in this bill. (See attached copy).

Article 2. Physical Examinations.

Section	Section
60. Repealed	120. Certificate of physical examination
65. Supervision	125. Immunization
70. Physical examination required	130. Repealed
80. Repealed	170. Repealed
110. Repealed	

Sec. 14.30.060. Repealed. (Sec. 59 ch 98 SLA 1966)

Sec. 14.30.065. Supervision. The program of physical examination and immunizations prescribed by sections 65—125 of this chapter shall be under the general supervision and in accordance with regulations of the Department of Health and Social Services. (Sec. 42 ch 98 SLA 1966; am Sec. 1 ch 131 SLA 1967; am Sec. 6 ch 104 SLA 1971)

Sec. 14.30.070. Physical examination required. (a) The governing body of each school district shall provide for and require a physical examination of every child attending school in the district. The examination shall be made when the child enters school or, in areas where no physician resides, as soon thereafter as is practicable, and thereafter at regular intervals considered advisable by the governing body of the district.

(b) The Department of Health and Social Services may require the district to conduct additional physical examinations which it considers necessary, and may reimburse the district for the additional examinations on the basis and to the extent the commissioner of health and social services prescribes by regulation.

(c) Examinations shall be made by a competent physician, except that if the services of a physician cannot be obtained or if authorized by the commissioner of health and social services examinations may be made by a nurse. (Sec. 37-7-11 ACLA 1949; am Sec. 10 ch 118 SLA 1949; am Sec. 1 ch 72 SLA 1953; am Sec. 43 ch 98 SLA 1966; am Sec. 6 ch 104 SLA 1971)

Sec. 14.30.080 — Sec. 14.30.110. Repealed. (Sec. 59 ch 98 SLA 1966)

Sec. 14.30.120. Certificate of physical examination. The school board, when physical examinations are made, shall deliver to the parent, guardian, or other person having the responsibility for or control of the child a report signed by the physician or nurse making the examination, specifying the findings with respect to the health and physical well-being of the child. (Sec. 37-7-13 ACLA 1949; am Sec. 12 ch 118 SLA 1949; am Sec. 44 ch 98 SLA 1966)

Sec. 14.30.125. Immunization. If in the judgment of the commissioner of health and social services it is necessary for the welfare of the children or the general public in an area, the governing body of the school district shall require the children attending school in that area to be immunized against the diseases the commissioner of health and social services may specify. (Sec. 45 ch 98 SLA 1966; am Sec. 2 ch 131 SLA 1967; am Sec. 6 ch 104 SLA 1971)

Sec. 14.30.130—14.30.170. Repealed. (Sec. 59 ch 98 SLA 1966)



CHRISTIAN SCHOOL COMMUNICATOR

AACS NATIONWIDE STUDENT ACHIEVEMENT TESTING PROGRAM

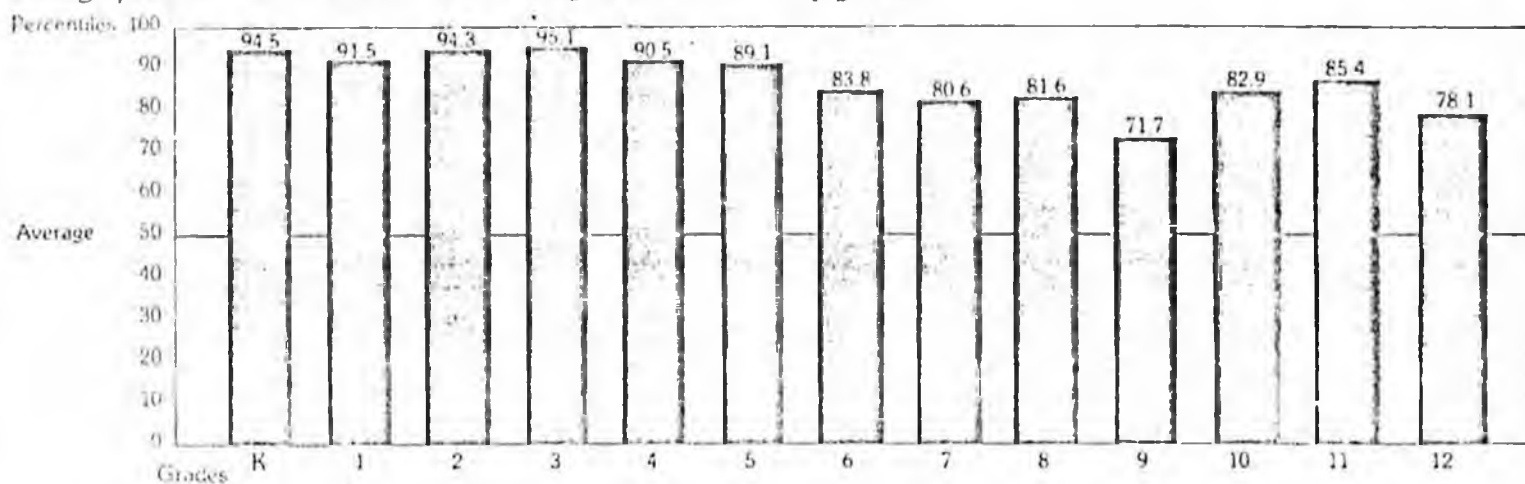
By Dr. Bruce Jackson, Educational Director
American Association of Christian Schools

What can be said about the academic achievement of Christian schools? Are students learning anything besides Bible? How do Christian schools compare with other schools across the country?

Perhaps the new testing program of the American Association of Christian Schools will help to answer some of these questions. AACS has been working with the publisher of the Stanford Achievement Tests and the Otis-Lennon School Ability Test (I.Q. Test) to develop a testing program for AACS member schools. Besides the national norms that are typically given on scoring sheets, the Christian school also receives a set of scores that reflect the norms of AACS schools only. These additional scores allow a school the opportunity to observe how the academic achievement of its students compares to the achievement of all of the students in schools involved in the testing program. For example, if the average percentile for the various test categories of the

fourth grade of a particular school were the 60th percentile, that school would know that its four grade program was above average as compared to the other Christian schools. A score at the 60th percentile simply means that 60% of the students' scores ranked below that point and 40% ranked above. A program that was average compared to the other Christian schools would receive a score of approximately the 50th percentile.

The first AACS testing was scheduled for this past November (1982). Schools received scores as described above which allowed that school to compare the achievement of its students with those in other Christian schools. In addition, each school also received scores based upon national norms which included public, private, and parochial schools across the country. The following chart illustrates the average achievement of AACS schools participating in this initial test sampling by grade:



Looking over the chart, one can see that the Christian schools demonstrated outstanding achievement as compared to national norms. Ninth-graders had the lowest average of all the grades, yet that was almost 22 points above the national average (50th percentile).

Some cautions need to be noted with regard to the use of these scores. These scores indicate the achievement of those schools involved in the November testing and thus, are not necessarily representative of all Christian schools. An individual school should advertise its own scores rather than the averages of Christian schools in general.

Why do Christian schools do so well? There are several reasons why Christian schools are able to demonstrate such superior achievement:

1. The student learns in a disciplined environment where the teacher maintains firm, but loving control over the classroom. Students are taught how to properly develop self-government so that they are able to recognize and fulfill their God-given responsibilities.
2. A Christian philosophy of education demands

an emphasis on the basics. Thus, the curriculum is designed so as to offer such basic instruction as phonetic instruction in reading beginning in Kindergarten. Much time is spent on basic reading and arithmetic skills in the lower grades.

3. The Christian teacher is definitely a key to the success of the Christian school. A Christian school teacher is one who has been led by the Lord into the ministry of Christian schools. The teacher is not looking for personal gain, but rather for an opportunity to give of oneself.
4. Parents of Christian school students tend to be vitally concerned about their children's education. Part of their parental responsibility to their children is to spend time at home reinforcing the work of the school.

Thus, one who thoroughly understands the Christian school movement is not surprised at such achievement. Parents and schools should properly use the testing results so as to continually improve the achievement of students. After all, it is part of one's Christian testimony to always do one's best.

SB 261 AND HB 357

Summary of the Legislation

SB 261 and HB 357 deal exclusively with private church schools and schools operated by religious organizations and, as amended, are modeled after the legislation adopted by North Carolina in 1979 and by West Virginia in 1982 to remedy church-state constitutional conflicts. These laws, if enacted by the Legislature, would establish requirements that must be met by private religious schools in order for parents whose children attend them to satisfy the compulsory education law. They would also exempt pre-elementary and nursery programs operated by religious organizations from the supervision of the Departments of Education and of Health and Social Services. The purpose of these bills is to remedy existing church-state constitutional conflicts by protecting the guaranteed religious freedom of church schools in Alaska and, at the same time, to balance the state's interest in assuring that each child receives a good education.

This legislation only covers schools, pre-elementary programs or nursery programs operated by a church or other nonprofit religious organization exempt from federal taxation and not receiving state or federal funding. These are constitutionally protected groups and activities.

More specifically, church schools (or denominational schools as defined in the proposed legislation) would be required to maintain attendance and immunization records. Since current compulsory education laws make parents liable for their children's failure to attend school, these bills, as amended, would require the parents to file statements with the public school authorities to establish their children's attendance at a church sponsored private school. By placing the requirement on the parent, the bills avoid the constitutional problems created by the state's excessive entanglement in religious activities. The school would also be required to operate on a regular schedule, at least nine calendar months per year, and to be subject to reasonable fire, health, and safety regulations.

To ensure that children attain certain minimum standards, each religious school would be required to administer a nationally standardized test to students in the first, third, sixth and ninth grades and to make the school results available for the Department of Education. This would satisfy the state's interest in compulsory education and still avoid the constitutional problem of excessive state entanglement in religion.

Any church school that satisfied all the requirements of AS 14.45 would be exempt from any additional provision of law relating to education except those requirements of law relating to fire, health, and safety.

Constitutional Requirements

The changes set out in SB 261 and HB 357, as amended, are required to correct existing Alaskan laws which run afoul of the constitutional mandate requiring the states to avoid excessive entanglement in religious activities. The state's right to impose minimum requirements on private religious schools is very limited, because these religious activities are protected by the First Amendment of the United States Constitution and its identical counterpart in the Alaska Constitution, Art. I, sec. 4.¹

Schools operated by churches or by nonprofit religious organizations are quite different from other private schools. They enjoy a constitutionally protected status.

"Church operated schools are generally integral parts of their sponsoring churches. Their superintendents are generally pastors or assistant pastors of the sponsoring churches; their teachers are generally members; and their doctrinal stances are generally set by the sponsoring churches."²

Federal and state courts recognize that operating a church school is an integral part of the free exercise of religion.³ For many churches, it is in fact the ministry of the church. Because church operated schools clearly come within the First Amendment free-exercise clause, their activities are constitutionally

¹ E.g., Kentucky State Bd. for Elem. & Secondary Education v. Rudasill, 589 S.W.2d 877 (Ky. 1979), cert. den., 446 U.S. 938 (1980); Wisconsin v. Yoder, 406 U.S. 205 (1972); Lemon v. Kurtzman, 403 U.S. 602 (1970); Pierce v. Society of Sisters, 268 U.S. 510 (1925).

² "State Regulation of Private Religious Schools in North Carolina -- A Model Approach," 16 Wake Forest Law Review 405, 431-32 (1980).

³ See, e.g., NLRB v. Catholic Bishop, 99 S. Ct. 1313 (1979) (Catholic parochial schools are founded for religious reasons and religious doctrine is pervasive); Surinach v. Pesquera de Busquets, 604 F.2d 73 (1st Cir. 1979) (private Catholic schools are an integral part of the Catholic Church and as such "involve substantial religious activity and purpose"); Hunt v. McNair, 413 U.S. 734, 743 (1973) ("[R]eligion is so pervasive that a substantial portion of [religious school] functions are subsumed in the religious mission."); Lemon v. Kurtzman, 403 U.S. 602, 616 (1971) ("[T]he parochial schools constituted 'an integral part of the religious mission of the Catholic Church'. . . In short, parochial schools involve substantial religious activity and purpose.").

protected as fundamental rights.⁴

In the area of First Amendment individual liberties, any state legislation that burdens parents', childrens', or a church's free exercise of religious beliefs is unconstitutional unless, the state can demonstrate "a compelling state interest in the regulation of a subject within the state's constitutional power to regulate." Sherbert v. Verner, 374 U.S. 398, 403 (1963).

To establish the existance of a compelling state interest, it is not enough for the state to merely show that a rational relationship exists between a colorable state interest and the proposed regulation. According to Sherbert, "[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation."

More importantly, the state must demonstrate that it is using the least burdensome method for addressing the compelling state interest. The current law violates this mandate, because the legislative goals can be achieved with less burdensome methods. SB 261 and HB 357, as amended, use North Carolina and West Virginia laws as models and are less burdensome while still accomplishing legislative goals.

Eventhough SB 261 and HB 357, as amended, would create two classes of private schools and treat them differently, these bills would not violate the Equal Protection clause of the Fourteenth Amendment. According to established legal principles⁵, the equal protection guarantee of the Fourteenth Amendment does not take from the state legislatures all power to classify persons or objects. The state may classify persons for the purpose of legislation. Classification is an inherent right and power of the legislature.

The important issue for these proposed bills is whether the distinction between private schools operated for profit and private schools operated by churches is based on a real and substantial difference between the two classes. Clearly, there is a substantial difference. The decision of the legislature to recognize its limited ability to regulate church schools is based on a constitutional distinction between the two classes. Church schools are in a protected class, enjoying the protection of the First Amendment. Private schools are not.⁶

⁴ ibid.

⁵ 16A Am Jur 2d, Constitutional Law, §746, et. seq.

⁶ In addition, it must noted that the motivations for operating a private school for profit and a school operated by a church are entirely different.

In the area of religious freedom and expression, the Constitution demands neutrality. The government cannot demonstrate a hostility toward religion or religious activity. The mere fact that the government specifically exempts religious groups from complying with certain laws does not violate the Constitution. For example, federal law clearly creates two classes when it exempts the property and income of religious organizations from federal taxation. These two classes parallel the two classes which would be created by SB 261 and HB 357, as amended. The Supreme Court held this was proper legislation in Walz v. Tax Commission, 397 U.S. 664,669 (1970). The Supreme Court found that neither the purpose nor the effect of such exemption was to advance or inhibit religion. It was "benevolently neutral."

The distinction between private schools operated for profit and those operated by churches is real and parallels distinctions created by the federal tax laws. Therefore, there is no violation of equal protection guarantees.

In summary, the present law violates both the United States Constitution and the Alaska Constitution. SB 261 and HB 357, as amended, balance the state's interest in ensuring that each child receives a good education with the fundamental right to religious freedom and should be adopted.

HB 357

* Section 1. AS 14.07.020 (8) is amended to read:

(8) in cooperation with the Department of Health and Social Services, exercise general supervision over public and private pre-elementary schools and over the educational component of nurseries as defined in AS 47.35.080 (4) excluding pre-elementary schools and nurseries operated by a church or other nonprofit religious organization that is exempt from federal taxation provided the program does not receive state or federal funding; pre-elementary schools in this paragraph means schools for children ages three through five years when the schools' primary function is educational;

* Section 2. AS 14.30.010 (b)(1) is amended to read:

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

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

(B) tutoring by personnel certificated according to AS 14.20.020; [OR]

(C) except as provided in (D) of this paragraph, attendance at a private school in which the average student proficiency is not less than the average proficiency found in the public schools in the area as measured by national achievement tests; the department with assistance from representatives of the private schools shall promulgate regulations defining the subject areas to be tested and the minimum average scores to be achieved;
or

(D) attendance in an educational program operated by a church or other nonprofit religious organization that is exempt from federal taxation provided the program does not receive state or federal funding and provided that the church or other nonprofit religious organization elects to comply with the provisions of AS 14.45;

* Section 3. AS 14.45.015 is added to read:

Sec. 14.45.015. POLICY. In conformity with the fundamental right to freedom of religion guaranteed by the constitutions of the United States and of Alaska, it is the public policy of the State in the matters of education by religious organizations that the state shall not control or interfere with the rights of conscience or with religious liberty. The State further finds that there is no compelling reason to interfere with this fundamental right.

* Section 4. AS 14.45.020 is repealed.

* Section 5. AS 14.45.025 is added to read:

AS 14.45.025. STANDARDIZED TESTING REQUIREMENTS. Each school operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding and that has elected to comply with this chapter shall administer, at least once in each school year, a nationally standardized test or other nationally standardized equivalent measurement selected by the chief administrative officer of such school, to all students enrolled or regularly attending grades one, three, six and nine. The nationally standardized test or other equivalent measurement selected must measure achievement in the areas of English grammar, reading, spelling and mathematics. Each school shall make and maintain records of the results achieved by its students. For one year after testing, all records shall be made available to the parents at the principal's office, and the school composite test results shall be made available at all reasonable times for annual inspection by a duly authorized representative of the State of Alaska.

* Section 6. AS 14.45.030. is amended to read:

Sec. 14.45.030. ATTENDANCE AND ANNUAL REPORTS REQUIRED.

(a) Teachers and others in charge of private [OR DENOMINATIONAL] schools not operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding and that has elected to comply with AS 14.45 shall make regular monthly attendance reports and annual reports to the commissioner in the same manner as teachers and superintendents in the public schools.

(b) The enrollment and attendance of a child in a school operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding shall be filed with the local public school superintendent by the parent, guardian or other person in charge or control of the child on a form provided by the superintendent which shall be countersigned by the administrator of the church school and returned to the public school superintendent by the parent. Should said child cease attendance at a church school, the parent, guardian, or other person in charge or control of the child shall by prior consent at the time of enrollment direct the church school to notify the local public school superintendent that said child no longer is in attendance at a church school.

(c) Each school operated by a church or other nonprofit religious organization exempt from federal taxation and which does not receive state or federal funding shall make and maintain monthly attendance records for each student enrolled and regularly attending classes. Such school shall operate on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year.

* Section 7. AS 14.45.035 is added to read:

AS 14.45.035. REQUIREMENTS EXCLUSIVE. No school operated by any church or other nonprofit religious organization exempt from federal taxation which does not receive state or federal funding and which has complied with this chapter shall be subject to any other provision of law relating to education except requirements of law respecting fire, safety, sanitation, *physical* and immunization. *examinations*

* Section 8. AS 44.27.020(1) is amended to read:

(1) administer the state's program of education at the elementary, secondary, and adult levels, including, but not limited to, programs of vocational education and training, vocational rehabilitation, library services, correspondance courses, adult basic education, and fire-service training, but not including degree programs of postsecondary education or an educational program operated by a church or other nonprofit religious organization that is exempt from federal taxation if the program does not receive state or federal funding and if that school has elected to comply with the requirements of AS 14.45;

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(C) except as provided in (D) of this paragraph, attendance at a private school in which the average student proficiency is not less than the average proficiency found in the public schools in the area as measured by national achievement tests; the department with assistance from representatives of the private schools shall promulgate regulations defining the subject areas to be tested and the minimum average scores to be achieved; or

(D) attendance in an educational program operated by a church or other nonprofit religious organization that is exempt from federal taxation provided the program does not receive state or federal funding and provided that the church or other nonprofit religious organization elects to comply with the provisions of AS 14.45;

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(b) The enrollment and attendance of a child in a school operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding shall be filed with the local public school superintendent by the parent, guardian or other person in charge or control of the child on a form provided by the superintendent which shall be countersigned by the administrator of the church school and returned to the public school superintendent by the parent. Should said child cease attendance at a church school, the parent, guardian, or other person in charge or control of the child shall by prior consent at the time of enrollment direct the church school to notify the local public school superintendent that said child no longer is in attendance at a church school.

(c) Each school operated by a church or other nonprofit religious organization exempt from federal taxation and which does not receive state or federal funding shall make and maintain monthly attendance records for each student enrolled and regularly attending classes. Such school shall operate on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year.

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(1) administer the state's program of education at the elementary, secondary, and adult levels, including, but not limited to, programs of vocational education and training, vocational rehabilitation, library services, correspondence courses, adult basic education, and fire-service training, but not including degree programs of postsecondary education or an educational program operated by a church or other nonprofit religious organization that is exempt from federal taxation if the program does not receive state or federal funding and if that school has elected to comply with the requirements of AS 14.45;

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 18, 1983

SUBJECT: Regulation of religious schools
(HB 357)

TO: Representative Milo Fritz

FROM: Keith B. Levy *KBL*
Legislative Counsel

RECEIVED
MILO FRITZ, M.D.
APR 19 5 21 PM '83

You have requested a sectional analysis of HB 357, an Act relating to the regulation of religious schools. In general, the bill amends certain sections of Title 14 of the Alaska Statutes to remove state control of schools operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding for its educational program.

Section 1 of the bill amends AS 14.07.020(8) to remove pre-elementary schools and the educational component of nurseries operated by these religious groups from the supervision of the Department of Education. The law currently requires the Department of Education to supervise these programs.

Section 2 of the bill amends AS 14.30.010(b)(1) to exempt children attending a school operated by one of the religious organizations described above from the requirement that children between seven and 16 years of age attend public school. It also makes clear that these schools need not have an average student proficiency that is at least equal to the average proficiency found in public schools in the same area. AS 14.30.010(b)(1) currently requires such proficiency of all private schools.

Section 3 excludes the schools described above from the provisions of AS 14.45.020. As presently written, AS 14.45.020 allows the commissioner of education to furnish final examination questions and grant diplomas for eighth graders in private schools.

Section 4 amends AS 14.45.030 to exempt the schools described above from monthly attendance and other reporting requirements currently applied to public and private schools.

Section 5 amends AS 44.27.020(1) to exclude the schools described above from the general duty of the Department of Education to administer the state's program of education.

You should be aware that HB 357, as currently written, presents a constitutional problem with respect to the equal protection clauses of the state and federal constitutions. The bill exempts certain private schools from requirements that apply to all other private schools. The factors that distinguish the exempt schools from the nonexempt schools are their federal taxation exemption status, that the educational programs involved do not receive state or federal funding, and that they are operated by a church or other nonprofit religious organization.

The equal protection clause of the Constitution of the State of Alaska (Article I, section 1) has been interpreted to mean that legislative classifications

...must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

Isakson v. Rickey, 550 P.2d 359, 363 (Alaska 1976). Accordingly, the distinguishing factors mentioned above must meet this test if HB 357 is to survive a constitutional attack. Although some of the distinguishing factors do meet the test, at least one probably does not.

Singling out schools which do not receive state or federal funds for exemption from certain state requirements probably has a fair and substantial relationship to the goals of the legislation in the sense that the state has less of an interest in controlling such schools. The same may be true of schools with nonprofit status under federal taxation laws. However, a provision which singles out a school merely because it is operated by a church or other religious organization is subject to greater scrutiny. The legislature may be called upon to justify treating a private, nonprofit school which does not receive state or

Representative Milo Fritz
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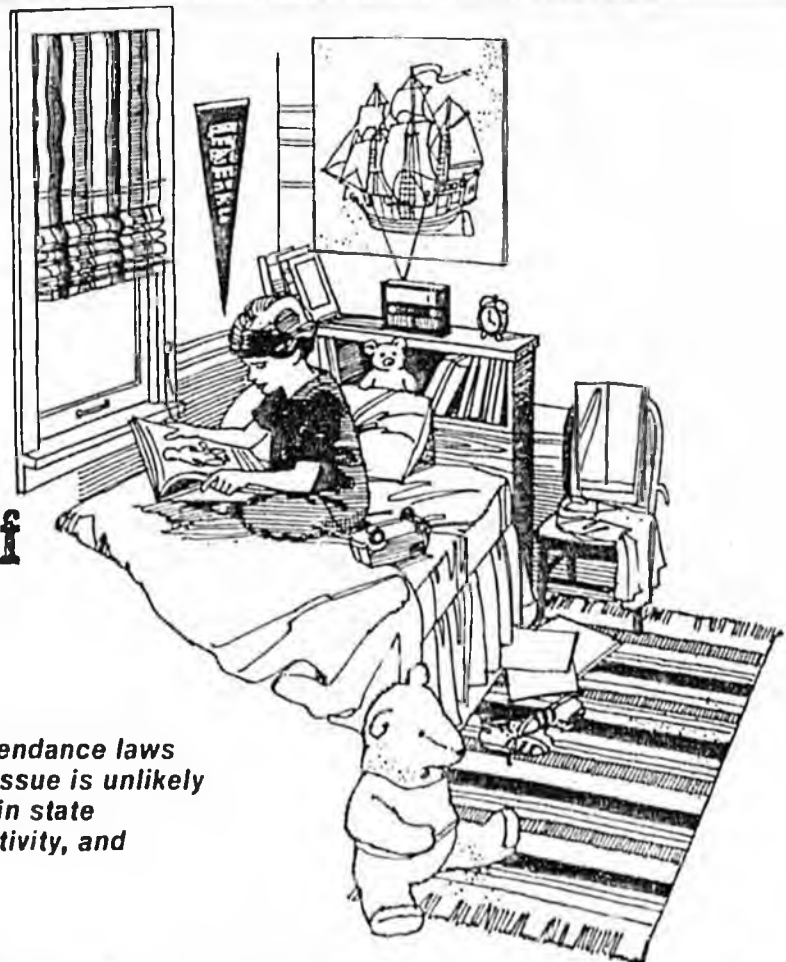
federal funding in a different manner than a private, nonprofit school which does not receive federal funding and is operated by a church or other religious organization. The only difference between the two classes of schools is that one is run by a religious group and the other is not. To justify such a distinction, the legislature would have to show a very substantial relationship between the distinction and the goals of the legislation. Moreover, the goals of the legislation must be constitutionally legitimate. In my opinion, the classifications created by HB 357 lack this level of justification to the extent that they are based solely on religion. For this reason, the bill is probably unconstitutional.

KBL:ljb
15/009

State Regulation of Private Education

by Patricia M. Lines

Violations of state compulsory school attendance laws appear to be rising dramatically, and the issue is unlikely to go away. Ms. Lines details the trends in state regulation, the current wave of judicial activity, and the implications for public policy.



Although a good education is generally considered crucial to a child's future economic success and personal happiness, a growing number of people believe that traditional schooling is neither indispensable to education nor "right" for every child. Thus some parents are enrolling their children in unaccredited private schools or teaching them at home, whether or not such choices are acceptable under compulsory school attendance laws.

Parents who violate such laws risk criminal charges, fines, jail sentences, and other forms of legal compulsion. Under most state laws, a child who is declared a truant may be institutionalized. Resisting school attendance requirements takes its toll in other ways as well, the judicial process is rarely easy on the participants.¹

PATRICIA M. LINES is director of the Law and Education Center, Education Commission of the States (ECS), Denver. Copies of the complete report from which this article comes ("Private Education Alternatives and State Regulation," Pub. No. LEC-82-3) are available at \$4.50 each from the Law and Education Center, ECS, 1860 Lincoln St., Denver, CO 80295. The research for this article was supported by ECS state fees and by grants from the Carnegie Corporation, the Spencer Foundation, and the Ford Foundation. The conclusions are the author's own and do not necessarily reflect the views or policies of these agencies.

But despite the serious personal consequences for parents and for children, violations of state compulsory school attendance laws appear to be rising dramatically, presenting policy makers with one of the most serious issues facing them today.

Nontraditional Schooling

Parents who place their children in unauthorized educational programs have a variety of reasons. Those who choose home schooling often see public schools or publicly approved private schools as too traditional or too conservative. By contrast, the growing number of parents who send their children to fundamentalist Christian schools tend to feel that the public schools are too liberal or devoid of the moral and religious instruction that they see as crucial to children's education. These disparate groups have two things in common: a rejection of the ideal of the U.S. public school as melting pot and a willingness to defy the law in the interests of their children.

The public education system is caught in the middle, unable to please everyone but responsible for enforcing compulsory attendance laws against those who disagree with the values that undergird the public school program.² Some state and local officials wonder whether compulsory attendance is important enough to be treated as a criminal offense, with stiff

penalties imposed on parents for seeking what they believe to be the best education for their children. Others worry that children in unaccredited programs may not be acquiring the essential skills for good citizenship and self-sufficiency; they are also concerned about the long-range implications of allowing large segments of the population to insulate themselves from the mainstream of society. Still others fear that private schools provide havens for those who seek to avoid racial integration.³ One state official expressed a private suspicion that hucksters, interested only in tuition payments, were running one particular fundamentalist Christian school. Meanwhile, a few state officials have recognized the financial implications for public schools of the trend toward nontraditional schooling, which is siphoning off students and thus enrollment-based state aid.

This issue is unlikely to go away. In fact, the number of families choosing nontraditional educational options seems to be increasing. The Census Bureau estimates that enrollments in non-Catholic private schools increased from 615,548 in 1965 to 1,433,000 in 1975.⁴ These figures probably cover only established, accredited schools, however.⁵ Families choosing unaccredited schools neither seek nor want state approval, and they probably do not want to be counted by the Census Bureau. Many of the unau-

Some states have consciously deregulated private schools. These states expressly limit state authority to promulgate regulations.

thorized schools are fundamentalist Christian schools, which reject state authority over their operations as a matter of faith. Some refuse even to provide information on themselves. Using techniques designed to locate all hard-to-find schools in a sample of 22 counties, Bruce Cooper and Donald McLaughlin estimate that there are 15,000 non-Catholic private schools in the U.S., serving two million children; they also estimate that enrollments in these schools are increasing at a rate of 100,000 per year.⁶ It seems likely that the largest growth in attendance has occurred among small, unaccredited schools.

Many other children in the underground education movement are taught at home. John Holt, an educator and author whose Boston-based organization, Holt Associates, provides support services for home instruction, estimates that there are more than 10,000 families educating their children at home in defiance of compulsory education laws. Others believe the number to be much higher.

If enrollment figures are hard to come by, data on the quality and goals of unaccredited education programs are even more elusive. Virginia Nordin and William Turner have attempted to locate and evaluate fundamentalist Christian schools in Wisconsin and Tennessee. From their own observations and the scant available data, they have concluded that supporters of these schools are motivated by strong religious beliefs, not by segregationist attitudes.⁷

The scant amount of available evidence from standardized tests suggests that these unaccredited alternatives are educationally adequate. Test scores introduced as evidence in a few lawsuits suggest that children's performances improve after they are enrolled in unauthorized educational programs.⁸ Test data from a home tutorial network in Los Angeles showed children in the tutorial program scoring higher than children in the public schools. However, the researchers did not control for parents' socioeconomic status, and pretest data were not available.⁹

Trends in State Regulation

Traditionally, compulsory school attendance laws have served as the mechanism for enforcement of minimum standards for private education. Punishment for breaking those laws has been directed at parents and children, not at those who offer private instruction. Typically, the basic requirement of these laws is school attendance, although some states require education of the child. These laws almost always mandate fines and jail sentences for parents who fail to comply; frequently they make children subject to truancy

charges and possible institutionalization. In nearly every state, the local superintendent or school board and the local prosecuting attorney are responsible for identifying truants, i.e., children who are not enrolled in an approved educational program. In most states, local officials also have primary responsibility for approving home instructional programs, if such programs are allowed by state law. Local boards may also have responsibility for approving private schools, but the state often assumes this task. The criminal sanctions in compulsory attendance laws appear to have been designed for parents who are guilty of neglecting their children's education.

Acceptable ways of complying with a compulsory education requirement vary widely among the states. Some states demand certification of teachers and schools, some require that only the schools be approved, and some merely require minimal evidence that schooling takes place. At one end of the spectrum, such states as Alabama, Iowa, Nebraska, North Dakota, West Virginia, and Wisconsin have obtained state court approval for at least some aspects of the regulation of private educational alternatives. Those states with more flexible requirements will probably experience less litigation, unless the state boards exercise their broad statutory authority to impose more stringent standards. Connecticut, for example, provides a broad exception to the school attendance requirement; parents who do not send their child to public school must educate the child themselves or "show that the child is elsewhere receiving equivalent instruction in the studies taught in the public schools."¹⁰ Other states that follow this model include Delaware, Idaho, New Jersey, South Dakota, and Vermont. The laws in these states typically do not specify who the teacher must be or where instruction is to take place.¹¹

Some states have consciously deregulated private schools. These states expressly limit state administrative authority to promulgate regulations. Tennessee, for example, prohibits the state board and local boards from regulating faculties, textbooks, or curricula in church-affiliated schools.¹² Prior to the passage of a new law in North Carolina, the state board had gradually expanded its regulations governing private schools to the point of requiring that teachers' qualifications, courses of study, and textbooks be substantially the same as those in the public schools. Now North Carolina requires only that private schools keep records on pupil attendance and disease immunization and that they select and administer a nationally standardized test to students each year. The schools keep the tests on

file and make them available to state inspectors. They must also meet fire, health, and safety standards established by other laws.¹³

State law in Washington prevents state agencies from expanding on statutory provisions, but these provisions set minimum standards as to length of a school year, length of day, subjects to be taught, and teacher qualifications. Teacher certification is required, except for courses in religion and other subjects not taught in the public schools.¹⁴ This requirement is a stumbling block for many private educational alternatives. However, state law in Washington allows persons of "unusual competence" to teach, if they are supervised by certified teachers. In practice, Washington may allow private educators more flexibility than the state law would suggest.

Laws in about half of the states permit instruction at home by a parent.¹⁵ Other states permit instruction at home by a certified teacher (who may also be the parent). Of course, home instruction is permissible in any state if it meets all the requirements of a private school.¹⁶ It would not be easy for most homes to meet these requirements.

State legislators and board members, torn between strong lobbies for both public and private education, are having a difficult time dealing with the issue of regulation of private education. In states that have little regulation, such as Oregon and Idaho, bills to establish even minimal reporting requirements are failing to pass. By contrast, efforts in the state of Washington to permit instruction by a parent are also foundering in the legislature. Large numbers of state legislatures are being asked — usually by fundamentalist Christian schools — to deregulate private schools, but to date only Alabama has responded to such requests. The topic appears to be so controversial that any kind of legislative change will be very difficult.

Legislative change is not impossible, however. Both Arizona and Vermont recently modified their laws to reduce the friction between public and private education sectors. Clearly, legislative change is more desirable than change through the courts. It is less polarizing, and it minimizes personal costs for the individuals involved.

Supreme Court Guidance

In the 1920s the U.S. Supreme Court outlined in part the limits to state regulation of private education. In *Pierce v. Society of Sisters* the Court struck down an Oregon law that required attendance at public schools only. The Court held that the law "unreasonably interferes with the

liberty of parents and guardians to direct the upbringing of children under their control."¹⁷ The Court recognized as legitimate the interests of the state in compelling some form of schooling, but in this case the state had gone too far.

The Supreme Court also dealt in the Twenties with laws in Nebraska and Hawaii that were less restrictive but that still unreasonably burdened the right of parents to rear their children as they deem fit. In *Meyer v. Nebraska*,¹⁸ the Court struck down a state law forbidding the teaching of foreign languages to younger children. The Court found that this law was not rationally related to the stated

Clearly, legislative change is more desirable than change through the courts.

goal in Nebraska of cultivating good citizenship. Meanwhile, in *Farrington v. Tokushige*, the Court struck down a law regulating foreign language schools in Hawaii. These schools, which were predominantly Japanese, were required to pay fees, to submit numerous reports, to establish their commitment to the "ideals of democracy," to adhere to strict rules regarding when and how long the schools could operate each day, and to follow detailed regulations on textbooks and other matters. The Court observed that enforcement of the act "would probably destroy most, if not all," of the affected schools.¹⁹

More recent Supreme Court decisions have provided some additional guidance on the extent of state authority to regulate private education. In 1979 the Court observed in *NLRB v. Catholic Bishop of Chicago* that enforcement of federal labor laws against religious schools touches on First Amendment rights. The Court decided the issue on statutory grounds, however, holding that the National Labor Relations Act does not apply to church schools.²⁰ In 1981 the Court ruled similarly in *St. Martin Evangelical Lutheran Church v. South Dakota*, a case involving federal and state unemployment taxes.²¹ Both cases follow a Supreme Court rule that requires lower courts to construe statutes in ways that enhance their constitutionality. The Supreme Court might have upheld the statutes involved in these two cases, had the statutes expressly included church schools. But the Court avoided a decision on the issue. These two cases suggest only that state regulation of private education may sometimes go too

far, but the Court's decisions provide no detailed guidance.

Finally, in a very different kind of case, the Court ruled in 1972, in *Wisconsin v. Yoder*, that Amish families with strong religious objections to public schooling are exempt from educational programs beyond the eighth grade.²² Although the plaintiffs objected to the absence of Amish values in the public school program, they accepted compulsory school attendance in the lower grades because they believed that their children should acquire basic skills. The Court held that, *as applied to the Amish*, the compulsory attendance law in Wisconsin is unconstitutional. This ruling does not affect state compulsory attendance laws in general, even in Wisconsin.²³ *Yoder* holds only that a state cannot compel a child to attend public school in the face of strong religious objections and when the state's interest in the education of the child is adequately served by an alternative program. The Court was careful to distinguish between philosophical and religious objections to formal schooling, and it took into consideration the long tradition of the Amish.

Despite the Court's limiting language, the *Yoder* decision can be extended at several points. First, it clearly applies to religions other than the Old Order Amish, if plaintiffs demonstrate a comparable sincerity of belief and if the record shows that the states' interests are being met by adequate alternatives. To restrict the exemption granted in *Yoder* to a single religion would be unconstitutional. The *Yoder* decision may also apply to nontheistic, nontraditional religious beliefs, if the standards in *Yoder* are otherwise met.²⁴ To date the Supreme Court has not had occasion to consider extensions of *Yoder*.

Current Judicial Activity

Lower courts have followed *Yoder* only when dealing with traditional, theistic beliefs.²⁵ In other cases, despite obviously sincere religious objections to approved school programs, the courts have refused to extend *Yoder*. Some of these cases have involved fundamentalist religious schools using the self-paced Accelerated Christian Education (ACE) curriculum.

In the celebrated case of *State v. Faith Baptist Church*,²⁶ a Nebraska court examined these curricular materials and found them generally adequate. Faith Baptist Church indicated that it would not request approval of the ACE program, even though church officials had been informed informally that the state board would grant such approval. The school run by Faith Baptist Church employed no

certified teachers, and school officials refused to furnish names and addresses of students to local and state education agencies, as required by state law. The defendants, citing *Yoder*, argued that the state has no authority whatsoever over the operation of a religious school. They offered evidence, including passages from the Bible, supporting their view that religion must be integrated into teaching and that the public schools are inadequate to this task. Finally, the defendants asserted that public schools have secular humanism as their basic philosophy.

The Nebraska High Court rejected these arguments and upheld the state regulations. The U.S. Supreme Court dismissed an appeal by the school for want of a substantial federal question.²⁷ To enforce court orders to close the school, a lower Nebraska court for a time had the church door padlocked during school hours. The children transferred to an unapproved fundamentalist religious school in Iowa. The case seems far from ended, however. The local prosecutor is now seeking enforcement of the Nebraska compulsory attendance law against the parents and school officials, and the minister who operated the school was jailed for contempt of court.

Nebraska officials are now proceeding against other fundamentalist schools. One, the Park West Christian School in Lincoln, is operated by the Rev. Carl Godwin, the pastor of Bible Baptist Church. Godwin, although clearly embarrassed by the publicity, is articulate and active. He has organized the Nebraskans for Religious Freedom and has retained the legal services of William Ball, the defense attorney in the *Yoder* case. Ball has a reputation for winning cases of this kind, and Godwin is willing to report enrollment data and similar matters. Thus Godwin's case may force the courts to focus more sharply on the constitutional issues. Godwin spoke before a conference of more than 100 leaders of public and private education, sponsored by the U.S. Education Department in early May, and he seems capable of winning support from the traditional private education sector. Such support could help to bring about legislative change before court action becomes necessary.

A flurry of judicial activity involving religious schools is now in progress, with mixed results.²⁸ Most court opinions are grounded in state constitutions or statutes. Although the case law can be transferred from state to state (as guidance, not as precedent), the disparity in state constitutions and statutes does not permit broad generalizations. Of course, general rules for federal cases may emerge, but this has not yet occurred.

Home instruction is in a somewhat dif-

ferent category than instruction in an unapproved school, although the line between them is unclear. Home instruction may be entitled to even more constitutional protection, because the child/parent relationship may be entitled to constitutional protection under a right to privacy. But this idea has not been tested, and judicial reactions to it have been mixed.²⁹

Of course, judicial opinions to date on home instruction represent only the tip of the iceberg. Additional cases have been or will soon be filed in Iowa, New Hampshire, Maine, Michigan, and many other states. Given the accelerating growth of the fundamentalist Christian schools, other nontraditional private schools, and home instruction, strict state requirements for compulsory attendance in approved schools will probably continue to be challenged. As I have already noted, litigation of this type carries with it high personal costs for the individuals involved. Such litigation also has the potential to polarize supporters of public and private education.

Implications for Public Policy

Thus legislative reform seems preferable to judicial reform. Unlike the courts, legislatures are not limited to accepting or rejecting existing statutes. Their wider range of options allows for greater flexibility.

States that wish to reform the regulation of private education through legislative action might consider a shift in focus from compulsory school *attendance* to compulsory *education*. The available evidence, though scant, suggests that periodic testing of children enrolled in nontraditional educational programs may be a viable alternative to compulsory school attendance. States that move in the direction of compulsory education should probably establish minimal requirements for nontraditional programs with regard to the subjects to be taught, the amount of time per day and year to be devoted to instruction, and the reporting of enrollment and attendance figures and similar data to state officials. If a child shows unsatisfactory academic progress on standardized achievement tests, state law might require remedial instruction in an accredited or approved school.

In the interest of consumer protection, a state may wish to establish regulations that guarantee honest and fair promotion of private schools, including full disclosure of the teachers' qualifications and of the schools' educational philosophies. However, existing laws may already protect consumers adequately.

States that are concerned about the operation of schools in private homes

could amend their statutes to permit home instruction only by a child's parent(s). Statutes in such states could define "school" as instruction of children from one or more families by an unrelated teacher. (Some states may wish to emulate California, which has established separate rules for instruction at home by a tutor.)

North Carolina, Washington, and Oregon have established flexible regulations for private education that could serve as models elsewhere. In Oregon and North Carolina, test scores help to provide assurance that children enrolled in nontraditional programs are being educated. Washington relies on teacher certification for such assurance, although this gives private educational alternatives less leeway in staffing and precludes instruction by a parent in most cases. Such legislation would not be necessary, if state law did not give the state board of education or other state administrative officials broad regulatory power over private education in the first place. But such legislation is called for when a state board has gradually increased the requirements for nontraditional educational programs and the state legislature wishes to make clear its intent that statutory minimum standards are to remain *minimum* standards, not subject to expansion by administrative action.

Administrative action is probably the most peaceful means for resolving issues related to the regulation of private education. And flexible state laws make such action possible. In New Hampshire, for example, state officials have reached a somewhat fragile agreement with the fundamentalists: The state will accept school records submitted on church stationery instead of on standard state forms. Thus the state receives the information it must have to approve fundamentalist educational programs, and the fundamentalists do not feel that they are submitting to the state regulatory system. In Iowa, the state has agreed to accept reports from parents rather than from fundamentalist schools. Iowa fundamentalists see parental reports on children's schooling as analogous to the annual reports these parents file with the Internal Revenue Service. But they deem it inappropriate for the state to request such information directly from the church.

Because they are staunch supporters of public education and because they may see nontraditional educational programs as a threat to their membership, teacher unions seem likely to oppose the relaxation of state laws requiring attendance at approved schools staffed by certified teachers. These unions may argue that testing instruments are not yet sufficiently sophisticated to assure the public that adequate education is taking place. This is

probably true, but it could be argued that teacher certification is no better. Teacher certification is usually dependent on completion of a degree, which in turn is dependent on passing final examinations in college courses. (In some states, certification is also dependent on passing a competency test.) Ultimately, state legislators must decide whether testing a child, testing his or her teacher, or testing both would best provide adequate assurance that education is taking place.

Local school officials are also likely to oppose the relaxation of existing state laws regulating private education. As supporters of public education, such officials will probably be wary of the academic and social implications of nontraditional alternatives. They may also be concerned about the loss of state aid to public schools (which is based on enrollments) should more flexible regulations encourage families to choose private alternatives.

States that are sensitive to these problems could publish test data from non-traditional programs, if these data are available. They could also stand ready to revise their policies, if children in non-traditional programs fail to perform as well as they should. States should also recognize and deal with the problems caused by the loss of per-pupil aid to local school districts. For example, states might explore constitutional ways of providing partial state aid to local districts that make their school libraries, physical education facilities, art facilities, testing and guidance services, and other resources available to pupils in alternative educational programs. Such cooperation requires new laws and regulations. It also demands new relationships between state and local education officials and between public and private educational systems.

1. As an example of the extreme emotionalism that surrounds these cases, John Singer was involved in a shoot-out with law enforcement officers and was killed outside his Utah home three years ago. The officers were investigating a charge that Singer had failed to abide by his obligations under the Utah compulsory school attendance law.

2. Educators generally agree that it is nearly impossible to provide education without also imparting values. See, for example, William J. Bennett and Edwin J. Delattre, "Moral Education in the Schools," *The Public Interest*, Winter 1978, pp. 81-98; and Andrew Oldenquist, "Moral Education Without Moral Education," *Harvard Educational Review*, May 1979, p. 247.

3. There is some support for this point of view. On the heels of the school desegregation order in Mississippi, for example, that state repealed its compulsory education law, apparently to avoid requiring parents to send their children to integrated schools. Following a desegregation order in Los Angeles, an organization of parents opposed to busing formed a home instruction network that served approximately 1,000 children (see Roy A. Weaver, Anton Negri, and Barbara Wallace, "Home Tutorials vs. the Public Schools in Los Angeles," *Phi Delta Kappan*, December 1980, pp. 251-55).

4. Department of Health, Education, and Welfare, *Statistics of Public Elementary and Secondary Day Schools* (Washington, D.C.: National Center for Education Statistics, 1976), p. 6.

5. Census Bureau officials are unable to estimate the number of children enrolled in unapproved educational alternatives, according to a 10 February 1982 memorandum to the director from Paul M. Siegel, chief of the Education and Social Stratification Branch (copy on file at the Education Commission of the States).

6. Bruce S. Cooper and Donald H. McLaughlin, "The Latest Word on Private School Growth," paper presented at the annual convention of the American Educational Research Association, New York, March 1982. By contrast, public school enrollments have declined from approximately 45.9 million in 1970 to 42.6 million in 1978, according to *Statistics of Public Schools, Fall 1970* (Washington, D.C.: National Center for Education Statistics, 1971); and *Statistics of Public Elementary and Secondary Day Schools, Fall 1978* (Washington, D.C.: NCES, 1979).

7. Virginia Davis Nordin and William Lloyd Turner, "More Than Segregation Academies: The Growing Protestant Fundamentalist Schools," *Phi Delta Kappan*, February 1980, pp. 391-94. See also William Hazard, *The Flight from the Public Schools: Myth or Reality?*, a paper prepared for the Education Commission of the States, presented at the Special Advanced Leadership Programs Services Seminar for Legislators, Atlanta, 31 July 1980.

8. See *In re Rice*, 204 Neb. 732, 285 N.W.2d 223 (1979); and *State v. Shaver*, 294 N.W.2d 883 (N.D. 1980).

9. Weaver, Negri, and Wallace, pp. 253-54.

10. Connecticut General Statutes, Sec. 10-184 (1981).

11. See, for example, Delaware Code Annotated, Tit. 14, Sec. 2703 (1981); Idaho Code, Sec. 33-202 (1981); New Jersey Statutes Annotated, Secs. 18A:38-25 (West 1968); and South Dakota Compiled Laws Annotated, Sec. 13-27-3 (Supp. 1981). See also Table II in Patricia Lines, "Private Education Alternatives and State Regulation," Education Commission of the States, Pub. No. LEC-82-3, March 1982.

12. Tennessee Statutes Annotated, Sec. 49, §201-§204 (1970).

13. North Carolina General Statutes, Sec. 155C-547 *et seq.* (Cum. Supp. 1981); Sec. 115C-555 *et seq.*

(Cum. Supp. 1981); and Sec. 115C-378 (Cum. Supp. 1981).

14. Washington Revised Code, Secs. 28A.02.201 *et seq.* and 28A.27.010 (1981).

15. See Table B of Lines, "Private Education Alternatives. . ."

16. See, for example, Michigan Attorney General, Opinion No. 5579, 27 September 1979.

17. 268 U.S. 519 (1925), 534-35.

18. 262 U.S. 390 (1923).

19. 273 U.S. 284 (1927), 298.

20. 99 S.Ct. 1313 (1979).

21. 101 S.Ct. 2142 (1981).

22. 406 U.S. 205 (1972).

23. See, for example, *Meyerkorth v. State*, 173 Neb. 889, 115 N.W.2d 585 (1962); *Parr v. State*, 117 Ohio St. 23, 157 N.E. 555 (1927); *Stephens v. Bongart*, 15 N.J. Misc. 80, 189 A. 131 (1937); *State v. Hoyt*, 84 N.H. 38, 146 A. 170 (1929); *State v. Williams*, 56 S.D. 370, 228 N.W. 470 (1929); *State v. Freudenberg*, 166 Wis. 35, 163 N.W. 184 (1917); and *State v. Bailey*, 61 N.E. 730 (Ind. 1901).

24. See, for example, *United States v. Seeger*, 380 U.S. 163 (1965), in which the Court adopted a broad interpretation of the selective service law to avoid favoritism to individuals with more traditional theistic beliefs — a favoritism that would clearly violate the establishment clause.

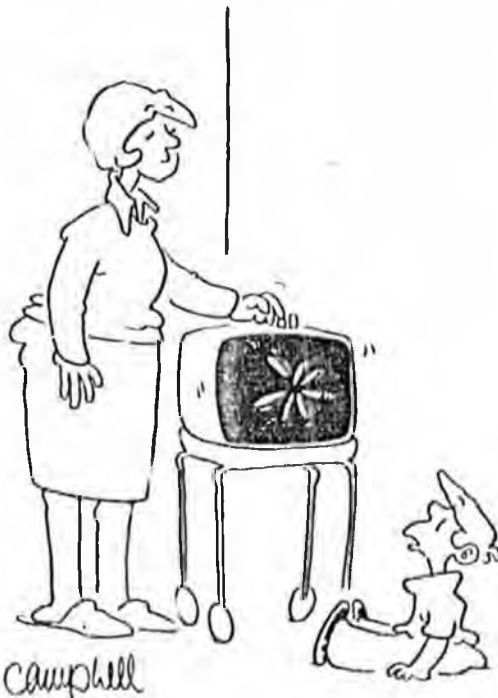
25. See, for example, *Nagle v. Olin*, 64 Ohio St.2d 341, 415 N.E.2d 279 (1980), which dealt with a non-Amish parent sending a child to an unapproved Amish school; and *State v. Nobel*, Nos. S 791-0114-A and S 791-0115-A (Mich. Dist. Ct., Allegan County, 9 January 1980), which dealt with a mother who was teaching a child at home but who refused for religious reasons to obtain a teacher's certificate, although she met the requirements.

26. 107 Neb. 802, 301 N.W.2d 571 (1981).

27. 102 S.Ct. 75 (1981). Members of the congregation of Faith Baptist Church subsequently brought suit in federal court, seeking an injunction against the state to permit continuation of the school. The court dismissed the suit, relying primarily on the Supreme Court's decision to dismiss the appeal (*Prettyman v. Nebraska*, Civ. No. 82-0-154, D. Neb., 16 April 1982).

28. For a discussion of applicable cases, see Lines, "Private Education Alternatives. . ."

29. *Ibid.* □



"Use my mind? At home?"

NOTES

Preliminary Findings

Religious and Secular Schools: Differences in State Control
Research Request 83-159
Leslie Longerbaugh, Research Staff
May 4, 1983

1. Which states allow religious schools to operate free of state control?

A. Primary and Secondary Schools

1) Five states exempt religious schools from some requirement(s) to which other private schools are subject.*

- a. Maryland
- b. Nevada
- c. Pennsylvania
- d. Tennessee
- e. Washington

Constitution?

2) Eight states do not require accreditation, approval, or licensure of any nonpublic school.*

- a. California
- b. Delaware
- c. Florida
- d. Massachusetts
- e. Minnesota
- f. New Mexico
- g. North Carolina
- h. Wisconsin

3) One state, South Dakota, has removed all state standards from all nonpublic schools. Students in the nonpublic schools must take competency tests periodically to ensure that they are receiving adequate instruction.**

4) Twenty-one states have voluntary, rather than mandatory, reporting by all nonpublic schools.*

- | | |
|----------------|-------------------|
| a. Alabama | l. Montana |
| b. Arizona | m. New Jersey |
| c. Colorado | n. North Carolina |
| d. Georgia | o. Oklahoma |
| e. Idaho | p. Oregon |
| f. Illinois | q. Tennessee |
| g. Indiana | r. Texas |
| h. Iowa | s. Utah |
| i. Kansas | t. Virginia |
| j. Louisiana | u. Wyoming |
| k. Mississippi | |

5) At least two states other than Alaska have legislation pending that would affect state control of religious schools.***

- a. Colorado
 - i. The bill would exempt both religious and secular private schools from state control.
- b. Montana
 - ii. The bill would make mandatory some of the requirements that are now voluntary.

B. Pre-schools

1) Three states now have laws exempting religious pre-schools from all state certification and inspection except for conformity with health and fire codes.****

- a. Arkansas; enacted 1981
 - i. A lawsuit has been filed challenging the constitutionality of the Arkansas law on the grounds that it denies the children who would attend such schools equal protection of the law.*****
 - a) A copy of the plaintiffs' brief in this lawsuit has been sent to us.
- b. Illinois
- c. Virginia

2) Legislatures in two states other than Alaska are now considering legislation that is similar to HR 357 in regard to pre-schools.****

- a. Arizona
- b. California

II. How do such states distinguish between religious and secular nonpublic schools for the purposes of the exemption?

- A. Religious schools for the purposes of these exemptions usually are those that are sponsored and funded entirely by a church or religious organization rather than through the state or federal government.
- B. The language used often includes a phrase such as "church-sponsored schools or schools with religious charters."

Sources

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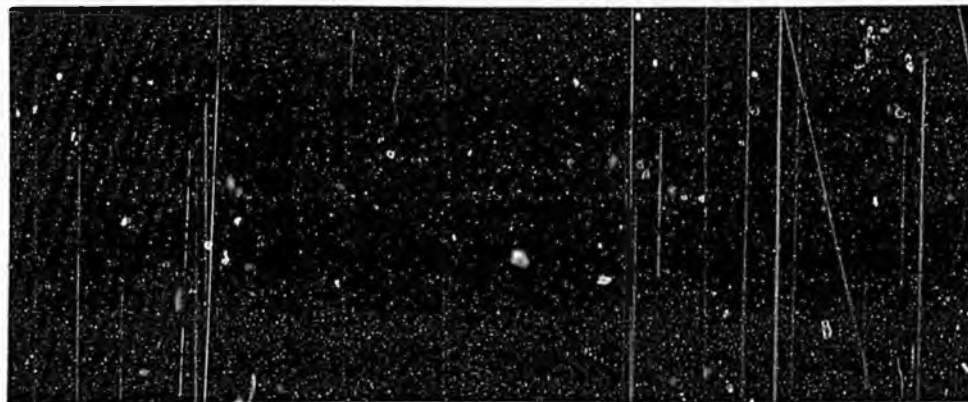
****Floyd Haberkorn
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12. Compulsory Schooling and Nontraditional Education

The Issue

Some parents today believe that traditional schooling (public or private) is not necessarily equivalent to "education" nor "right" for every child. They are placing their children in nontraditional schools (not necessarily accredited) or educating them at home. Their reasons vary. Some have overriding religious concerns; others are dissatisfied with or mistrust the public school system. Occasionally they seek only to escape the effects of public desegregation policies.

Some private options may violate state compulsory attendance laws. In some states, parents and individuals operating unaccredited private schools have received or are faced with jail sentences. One fundamentalist Christian clergyman in Nebraska has refused to comply with court orders directing him to either obtain state approval for his school or cease operating, and he has been jailed twice. A church has been padlocked to enforce laws requiring private schools to obtain state approval and comply with state rules for operating a school.

The Choice Before State Education Policy Makers

In states that require compulsory school attendance (rather than compulsory education) and require certified teachers in private schools, policy makers are being asked to change the laws. Private school people seek fewer requirements for private schools, exemption of church schools, provision for home instructions, removal of teacher certification requirements or other policies that would make it easier for individuals to choose nontraditional education options free of state accreditation or approval.

How Many Children are in Unapproved Education Options?

While most children in nonpublic schools are enrolled in Roman Catholic institutions, the U.S. Bureau of Census estimated that (as of 1975) there were close to 1.4 million children in non-Catholic, private schools. Most likely the census bureau counted only traditional and accredited schools. A more careful study for the National Center for Statistics suggests there are about 15,000 non-Catholic private schools serving approximately 2 million students, and that this population is increasing by 100,000 students per year. One might speculate that the difference of some 500,000 to 600,000 children between the official census and this study represents the number of children in unapproved schools.

By contrast, public school enrollments declined from approximately 45.9 million in 1970 to 42.6 million in 1978.

Estimates of the numbers of children being taught at home vary from 10,000 to 50,000.

Education In An Unapproved Setting

When available, testing data shows that children in these schools are performing above national standards. The data do not show whether this is due to socioeconomic status, other individual characteristics, or the education program. With this caveat, the data show children in a Los Angeles home tutorial program (approved by the state) scored higher than children in public schools on nationally standardized tests.. Experimental work done about ten years ago showed no significant difference in students' test scores whether they were taught by an experienced teacher or by a lay person knowledgeable in the subject taught. Finally, in three court cases, attorneys introduced evidence of test scores showing

improvement as children moved from a public school to a private, unapproved education option.

State Education Requirements

Traditionally, states enforce minimum standards for private education through compulsory school attendance laws, which provide for punitive action for noncomplying parents and children, but not for those who offer private instruction. Although these laws vary, they contain the following features:

- o All states have some kind of compulsory law requiring school attendance or education of children.
- o States that require education of the child rather than attendance include Connecticut, Delaware, Idaho, New Jersey, South Dakota and Vermont. Most states require school attendance, although many of these provide exceptions for home instruction.
- o Almost every state provides for jail sentences and fines for parents who fail to comply with the state's compulsory attendance law.
- o Without exception, compulsory requirements can be fulfilled by attendance at a nonpublic school that is properly approved or accredited. A number of states require the teachers to be certified, or require approval of the curriculum and similar matters.
- o Some states have recently "deregulated" private schools, and have restricted the authority of the state board of education to regulate them. These include Alabama, Arizona, Louisiana, North Carolina, and Tennessee. Washington restricts state board authority but contains a number of important statutory requirements, such as a teacher certification requirement.
- o Laws in about half the states permit home instruction by a parent whether the parent has a teaching certificate or not.
- o In some states, courts or attorneys general have ruled that if the home meets the standards for private school (generally, where a parent is a certified teacher), home instruction is allowed even if state law does not expressly so provide.

Court Challenges

The United States Supreme Court has indicated that regulation of nonpublic education can go too far. In a landmark case, Yoder v. Wisconsin, the high court narrowly ruled that Wisconsin's compulsory attendance law could not be enforced against the Amish (a religious community). The Court held that the state cannot compel attendance of children in the face of strong religious objections, so long as the children are adequately educated in an alternative setting. Lower courts have extended Yoder only when traditional religious beliefs are involved. Decisions outside of this narrow realm have been mixed, with most cases turning on state constitutional or statutory grounds.

Litigation over the status of private education has culminated in court rulings in a number of states, among them Florida, Hawaii, Iowa, Kentucky, Michigan, Nebraska, North Dakota, Ohio, Washington, and West Virginia. Generally states undergoing litigation require school attendance and certification of private school teachers. In a few states the central issue is approval of curriculum or facilities, or zoning rules. Additional cases have been or will soon be filed in many states, including Iowa, Maine, Michigan, New Hampshire, North Dakota, and Virginia. Given the growth of fundamentalist Christian schools, other nontraditional private schools and home instruction, states that require compulsory school attendance and set standards for the school will probably be challenged in the near future.

The litigation receiving the most attention from the media appears to be State v. Faith Baptist Church, dealing with the refusal of Reverend Everett Silevan to obtain approval from Nebraska for any aspect of his church-run school. The school uses a series of booklets called the Packet of Accelerated Christian Education (PACE), including instructional information and self administered tests. The school does not use state-certified teachers, a requirement under Nebraska's compulsory school attendance law. The Nebraska high court found the materials adequate, but upheld the state's requirement for certified teachers. On appeal to the United States Supreme Court, the case was summarily dismissed because, based on the papers filed before it, the high court could not identify an important constitutional issue.

Somewhat similar opinions (not going to the U.S. Supreme Court) have been handed down by state courts in Florida, North Dakota, and Wisconsin. In some of these cases, parents refused to provide any evidence about the child's schooling.

In other cases, state courts have ruled in favor of parents. In Ohio, in State v. Whisner, the state supreme court struck down a system of state regulation that, by its literal terms, left no time for religious instruction in a private school. A Michigan court was reluctant to find a mother teaching a child at home guilty under the state's compulsory attendance law, as she met the requirements for teacher certification but refused to obtain a certificate for religious reasons. (Michigan allows home instruction only by certified teachers.) In a Kentucky case, the state court applied a state constitutional provision (found only in a handful of state constitutions) that prohibits requiring a child to attend a school which parents find objectionable for conscientious reasons.

Policy Alternatives

Where statutory requirements are flexible, imaginative administrative solutions to the issue become possible. In New Hampshire, for example, state officials reached a somewhat fragile agreement with fundamentalists that required information to be submitted on church stationery rather than on official state forms. This fulfills the state's need for certain information, but recognizes the fundamentalists' tenet that they should not submit to state regulatory systems. In Iowa, the state accepts reports from parents instead of the fundamentalist school. The fundamentalists involved felt individual reporting was no different than filing an income tax form, while a church report was tantamount to church submission to state regulation.

A state considering a change in its policy can look to sister states for models. In the past five years several states have deregulated private education.

- o Tennessee, for example, prohibits the state board and local boards from regulating faculties, textbooks, or curricula in church affiliated schools.
- o North Carolina requires only that private schools keep records on pupil attendance and disease immunization and that they select and administer a nationally standardized test to students each year. The schools keep the tests on file and make them available to state inspectors. They must also meet fire, health, and safety standards established by other laws.
- o Washington prevents state agencies from expanding on statutory provisions, but these provisions set minimum