

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

2261 HHESS HB 357 (FILE 1) - (FILE 2)

1 programs of postsecondary education or an educational program operated
2 in compliance with AS 14.45 by a church or other nonprofit religious
3 organization that is exempt from federal taxation and does not receive
4 state or federal funding;

5 * Sec. 8. AS 14.45.020 is repealed.
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Official Business

Alaska State Legislature

House of Representatives

Committee on Rules

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-3764
465-3765

LETTER OF INTENT

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

The Rules Committee 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 committee's purpose in sending HB 357 to the floor and in urging its passage 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 committee 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.

The committee only intends to exclude from the purview of this bill those church schools that receive direct federal or state funds. This would not affect those schools that receive incidental benefits from government, such as fire or police protection, health care or other benefits to which all citizens are entitled.

Any church school that satisfies 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. While each church school would be subject to reasonable fire, health, and safety regulation, the Rules Committee intends to specifically limit health regulation to that regulation that is reasonably related to the state's interest in preventing and curing physical diseases. For example, the committee does not intend for the state to regulate minimum space requirements (except as it directly relates to the fire code), hours of attendance, or reasonable methods of discipline.

In summary, the Rules Committee Substitute for HB 357 balances the state's interest in ensuring that each child receives a good education with the constitutional right to religious freedom.

Respectfully submitted,

Rep. Jack Fuller
Rules Committee chairman

MEMORANDUM

State of Alaska

TO: Steve Hole
Administrator
Department of Education

DATE: June 10, 1983

FILE NO: 366-657-83

TELEPHONE NO: 465-3603

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: CSHB 357 (Rules)

By: ^{TJR} Thomas H. Robertson
Assistant Attorney General
Human Services-Juneau

This memorandum is written in response to our recent telephone conversation in which you asked whether language in CSHB 357 (Rules) which would exempt certain pre-elementary schools from supervision by your agency raises a question of equal protection under the law.

A substantial question exists as to whether this and other provisions of CSHB 357 (Rules) violate the equal protection clauses of the state and federal constitutions.

Section 1 of CSHB 357 (Rules) would exclude pre-elementary schools and nurseries operated by "a church or other nonprofit religious organization that is exempt from federal taxation and does not receive direct state or federal funding" from supervision by your agency under AS 14.07.020(8). Other sections of the bill would amend AS 14.30.010 which governs compulsory attendance and would exclude other educational programs operated by these organizations from regulation by the state. In effect, this bill would establish two categories of private schools, church related and not church related, and would provide for disparate treatment of each.

To the extent CSHB 357 (Rules) is intended to assure that your agency does not infringe first amendment protections, it is unnecessary. 1/ Your agency has no power to violate the

1/ The first amendment to the United States Constitution provides, in part, that Congress shall make no law "respecting an establishment of religion, or prohibiting the free exercise thereof". Similar language is contained in Article 1, sec. 4, of the Alaska Constitution.

constitutional rights. To the extent CSHB 357 (Rules) would go beyond first amendment protections, it raises a serious question of equal protection under the state and federal constitutions.

Equal protection analysis under either the state or federal constitutions requires an evaluation of the purpose of the legislation at issue. CSHB 357 (Rules) does not contain a statement of purpose and none, other than that of accommodating first amendment rights, is readily apparent. If as a factual matter sufficient reasons cannot be articulated to support a distinction between these categories of private schools, then a court would probably find this legislation to deny equal protection. 2/

In an opinion dated January 24, 1983, the Attorney General for the State of Arkansas addressed the constitutionality of a similar bill under consideration in that state. That opinion, a copy of which is attached, concludes that the bill unlawfully discriminates against children in religious child care facilities and the owners and operators of non-religious facilities. In addition, it concludes that the bill may impermissibly benefit religious organizations in violation of the First Amendment. Unless circumstances in this state require a different result, we would probably reach a similar conclusion if asked to undertake a more comprehensive analysis of this legislation.

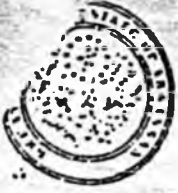
2/ Generally speaking, the Fourteenth Amendment to the United States Constitution requires that disparate treatment be supported by a rational basis unless a suspect classification (race, creed, etc.) or a fundamental right is involved, in which case it must be supported by a compelling state interest. In State v. Erickson, 574 P.2d 1 (Alaska 1978), the Alaska Supreme Court established a single standard for equal protection analysis under the Alaska Constitution. This standard, which is more demanding than the federal rational basis test, requires an evaluation of the purpose of the statute and, if the purpose is legitimate, a determination whether it is substantially furthered by the means chosen. Finally, the means must be balanced against the nature of any constitutional right which may be infringed.

Steve Hole
Department of Education
Our File 366-657-83

June 10, 1983
Page -3-

If you have additional questions, or desire further research in this area, please do not hesitate to contact this office.

THR:ja



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

STEVE CLARK
ATTORNEY GENERAL

January 24, 1983

OPINION NO. 83-15

The Honorable Joseph K. Mahony
The Honorable Robert L. McGinnis
State Representatives
1983 General Assembly
State Capitol
Little Rock, AR 72201

RE: House Bill 54

Gentlemen:

I am writing in response to your request for an opinion regarding the constitutionality of House Bill 54. An examination of the bill reveals an obvious concern that House Bill 54 is legally invalid as a violation of the equal protection provisions of the Fourteenth Amendment to the United States Constitution and Article 2, Section 3 of the Arkansas Constitution.

The Fourteenth Amendment states, in pertinent part, as follows:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. [Emphasis supplied]

These constitutional provisions have consistently been interpreted to strike down statutes which discriminate between different groups of citizens or businesses which are regulated by the same legislation.

That is to say, when the law attempts to regulate a business, industry or practice, it must do so on an equal basis to all the members of the regulated class unless there is a significant difference in the way the exempted class operates its business, industry or practice and the exemption is reasonably related to the purpose of the original legislation. Jacks v. State, 219 Ark. 392, 242 S.W.2d 704; Wematco Services, Inc. v. Gaddy, 272 Ark. 452, 616 S.W.2d 466, Rayco Construction Co., Inc. v. Vorsanger, 397 F.Supp. 1105; Milnot Co. v. Douglas, 452 F.Supp. 505. See also Milnot v. Arkansas State Board of Health, 388 F.Supp. 901 and Dicks v. Naff, Mayor, 255 Ark. 357.

The Honorable Joseph K. Mahony
The Honorable Robert L. McGinnis
January 21, 1983
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In the Rayco case the Court stated:

A state may validly differentiate between people or corporations on the basis of classifications providing that the state has legitimate and significant (in some contexts a "compelling") interest in the differentiation and provided that the classification is based on some reasonable and rational criteria or criteria; however, absent an appropriate state interest or absent rational and relevant standards of classification, state-imposed differentiation amounts to unconstitutional discrimination. [Emphasis supplied]

The exemption which H.B. 54 creates is the type of "classification" which these cases address.

Therefore unless the exemption can be justified because of differences in the operation of religious child care facilities as opposed to non-religious facilities this bill appears to discriminate, unlawfully, against not one but two classes of citizens; the children the Child Care Facility Review Board Act was intended to protect and the owners and operators of non-religious facilities.

Since there is no language in the bill indicating that children in these religious facilities are fed, supervised, etc. any differently from children in secular facilities and since there is no language in the bill indicating that children in the religious facilities are any less likely to be neglected, abused or left in hazardous circumstances than children in secular facilities there is no justification for denying to the children in these centers the protection of the state and forcing the owners of secular facilities to compete with unlicensed facilities who are operating the identical kind of business.

It is important to remember in this regard that the intent of the original act, as stated at Ark. Stat. Ann. §83-904(b), is the protection of children:

(B) In establishing requirements and standards for the granting, revoking, refusing, and suspending of a license for a Child Care Facility the Welfare Department [Child Care Facility Review Board] shall adopt such rules and regulations as will: promote the health, safety and welfare of children attending a Child Care Facility; promote safe, comfortable, and healthy physical facilities for the children who attend the Child Care Facility; insure adequate supervision of the children who attend the Child Care Facility, insure adequate supervision of the children by capable, qualified and healthy individuals; insure appropriate educational programs and activities within each Child Care Facility; and insure adequate and healthy food service where food service is offered by the Child Care Facility.

The Honorable Joseph K. Mahony
The Honorable Robert L. McGinnis
January 24, 1983
Page Three

With this in mind H.B. 54 demonstrates no rational, much less compelling state interest, in exempting facilities from licensure simply because they happen to receive no state or federal money and are associated with a religious organization.

The source of the facilities' funds and its association with a religious association simply does not appear to be connected in any way with whether or not these children deserve the same protection from abuse, neglect or hazardous circumstances as children in secular centers.

Likewise the source of the facilities' money and association with a religious organization does not appear to justify compelling a secular facility to spend the money and resources necessary to comply with the original act when the religious facilities operate the identical type of business enterprise.

Since there is no language in the original act which appears to authorize the Child Care Board to interfere with the religious beliefs of any church, this exemption seems irrelevant to any need to protect the First Amendment rights of religious groups.

However, if a religion's beliefs are manifested in practices which may threaten the safety and well being of children, then the state through its police power and the doctrine of *parens patriae* can and should lawfully discover and prevent such dangers. See Cude v. State, 237 Ark. 927, 377 S.W.2d 816.

In the Cude case the Arkansas Supreme Court overruled parents' religious objections to having children vaccinated, saying that the state's police power superceded the dangerous beliefs of parents which threaten the well being of the children. The Court quoting the United States Supreme Court in Prince v. Massachusetts, 321 U.S. 158, said:

The right to practice religion freely does not include liberty to expose the community or the child to communicable diseases or the latter to ill health or death.

. . . Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.

Again however, it is important to note that the intent of the original legislation has nothing whatsoever to do with parents' religious rights or the rights of a religious association but simply with the

The Honorable Joseph K. Mahony
The Honorable Robert L. McCinnis
January 24, 1983
Page Four

protection of all children, religious or not, in facilities which are religious or secular.

Therefore any argument that this exemption is necessary to protect the First Amendment rights of the prospectively exempt facilities is without support from any language in H.B.54.

In fact the bill itself appears that it may violate the doctrine of church/state separation by awarding an unjustifiable benefit to religious organizations not enjoyed by private facilities which operate identical enterprises.

Without a justifiable secular legislative purpose which neither advances or inhibits religion, the bill is, in fact also suspect from the point of view of the First Amendment. Romer v. Maryland, 426 U.S. 736, 96 S.Ct. 2337, 49 L.Ed.2d 179

Again, it is difficult to see, from the bill itself, a secular and neutral legislative purpose for exemption of only the religious facilities. Rather it appears that this legislation is clearly intended to further the alleged religious interests of certain denominations since there is no rational justification for the exemption in view of the legislative purpose quoted above.

The courts, in reviewing a challenge to this bill, can look behind the legislation into the history of the bill, something that has been done recently in McLean v. Board of Education, 529 F.Supp. 1255 (E.D. Ark. 1982), and Epperson v. Arkansas, 363 U.S. 97, 89 S.Ct. 260, 21 L.Ed. 2d 228 (1968).

Since the burden is on those defending a discrimination to make out a claim for justification (Wengler v. Druggist Mutual Insurance Co., 446 U.S. 142, 109 S.Ct. 1540, 61 L.Ed.2d 107) I can advise you that this bill presents no such justification and the state could therefore not carry that burden in a court action.

It is important to remember that:

1. Many children in the so-called religious centers are not members, nor are their parents, of the religious facility seeking exemption. So again the particular beliefs of the religious association are irrelevant to protecting the children at the facility. Circle H and Faith Christian homes recruit children from all over Arkansas regardless of the children's religion at the time of their arriving at these facilities. The Alamo foundation solicits new born babies from all over the nation totally disregarding any beliefs of the child.

The Honorable Joseph K. Mahony
The Honorable Robert I. McGinnis
January 24, 1983
Page Five

There is simply no rational justification for denying these children protection of state law because the institution they end up in, through no choice of their own, has a religious objection to licensure.

2. This exemption would not have protected Circle H Ranch because records at social services reflect it received well over \$100,000 in state and federal aid.

3. Many of these children come from broken homes, and have learning disabilities which require expert counseling and often special education which, as Judge Barrier found in the Circle H case, are not available at some of these facilities. These are children who need society's protection and assistance.

4. Health department inspections are inadequate to insure the safety of children because they do not have specific day care rules and regulations to address vital areas of the operation of a child care center such as playground safety, etc. The same is true with the Fire Marshal. Such problems were observed at the Alamo Foundation where an unfenced swimming pool and unfenced fishing pond were less than 100 feet from a playground serving 70 children.

5. Current criminal laws against child abuse are not adequate to protect children in these centers because: (1) These laws cannot operate without a report of abuse by a witness. At some facilities absolute loyalty is the rule and therefore it is unlikely that employees will file such a complaint; (2) Employees at other centers are not likely to report abuse because it may cost them their job; (3) Criminal statutes don't authorize closing the facility where abuse or neglect is practiced. They only allow prosecution of individuals. And if the only witnesses are children who are too young to testify, there is no case to take to a prosecutor although the abuse, unreported, is nonetheless occurring.

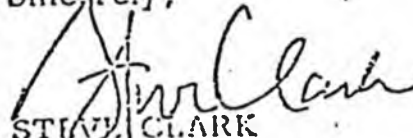
In conclusion, House Bill 54 is constitutionally suspect as being without rational justification and thus discriminates both against a large class of children and the owners and operators of secular facilities.

I am informed of the likely prospect of an immediate court challenge if the bill is enacted. In that eventuality, it is my judgment that the bill would be struck down as a violation of the constitutional provisions I have mentioned.

The Honorable Joseph K. Mahony
The Honorable Robert L. McGinnis
January 24, 1983
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If I may be of assistance in providing additional information on this or other proposed legislation, please do not hesitate to contact this office.

Sincerely,


STEVE CLARK
Attorney General

SC:mgv

SENATE AMENDMENT

By Josephson

To: _____ SENATE BILL No. _____

To: Committee substitute for HOUSE BILL No. 357 (RULES)

PAGE: 1 LINE: 9-18

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 the educational component of pre-elementary schools [and nurseries] operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive direct 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;

HOUSE WESS
COMMITTEE MEETING
AGENDA

PRIVATE SCHOOLS,
PAROCHIAL SCHOOLS.

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

Alaska State Legislature

REP. MAE TISCHER
CHAIRMAN

REP. MILK FRITZ
CO-CHAIRMAN

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

House of Representatives

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

MEMBERS:
REP. MIKE MILLER
VICE CHAIRMAN
REP. BETTE CATO
REP. MIKE DAVIS
REP. PETER GOLL
REP. NILO KOPCEN

To: Chief Clerk

Date: 5/13/83

From: House HESS Committee Staff 

Re: Notice of Hearing/ Proposed CSHB 357

In addition to the HESS Committee's scheduled calendar for Monday, May 16, the Committee will take testimony in regard to the proposed CS for HB 357 (HESS) at 1.p.m. in room 112 of the Capitol Building.

Levy
5/20/83

Original sponsors: Fritz, Tischer,
Pestinger, et al

1 1. THE HOUSE BY THE RULES COMMITTEE
 2 CS FOR HOUSE BILL NO. 357 (Rules)
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 THIRTEENTH LEGISLATURE - FIRST SESSION
 5 A BILL

6 For an Act entitled: "An Act relating to the regulation of religious
7 schools."

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

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

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

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

20 (1) is provided an academic education comparable to that
 21 offered by the public schools in the area, either by
 22 (A) attendance at a private school in which the teach-
 23 ers are certificated according to AS 14.20.020;
 24 (B) tutoring by personnel certificated according to
 25 AS 14.20.020; [OR]
 26 (C) except as provided in (D) of this paragraph,
 27 attendance at a private school in which the average student
 28 proficiency is not less than the average proficiency found in the
 29 public schools in the area as measured by national achievement.

CS deletes
"the educational
component of"

1 tests; the board of education [DEPARTMENT] with assistance from
2 representatives of the private schools shall adopt [PROMULGATE]
3 regulation, defining the subject areas to be tested and the
4 minimum average scores to be achieved; or

5 (D) attendance in an educational program operated in
6 compliance with AS 14.45 by a church or other nonprofit religious
7 organization that is exempt from federal taxation and does not
8 receive direct state or federal funding;

9 * Sec. 3. AS 14.45 is amended by adding a new section to read:

10 Sec. 14.45.025. EXEMPTION FROM EDUCATION LAWS. A religious
11 school that complies with this chapter is exempt from other provisions
12 of state law and regulations relating to education except laws and
13 regulations relating to health, fire safety, sanitation, immunization,
14 and physical examinations.

15 * Sec. 4. AS 14.45.030 is amended to read:

16 Sec. 14.45.030. ATTENDANCE AND ANNUAL REPORTS REQUIRED. (a)
17 Except as provided in (b) and (c) of this section, teachers [TEACHERS]
18 and others in charge of private or denominational schools shall make
19 regular monthly attendance reports and annual reports to the commis-
20 sioner in the same manner as teachers and superintendents in the
21 public schools.

22 * Sec. 5. AS 14.45.030 is amended by adding new subsections to read:

23 (b) The parent or guardian of a child enrolled in a religious
24 school that complies with this chapter shall file an annual notice of
25 enrollment in the religious school for the child with the public
26 school superintendent for the area in which the child resides on a
27 form provided by the public school superintendent. The form shall be
28 signed by the parent and the chief administrative officer of the
29 religious school and returned to the public school superintendent by

1 the parent. The religious school shall notify the public school
2 superintendent immediately if the child is no longer enrolled in or
3 attending the religious school.

4 (c) A religious school that elects to comply with this chapter
5 shall maintain monthly attendance records for each student enrolled in
6 the school, shall operate on a regular schedule, excluding reasonable
7 holidays and vacations, during at least 180 days of the year, and
8 shall make an annual report to the commissioner of the number of
9 students in each grade and the school calendar.

10 * Sec. 6. AS 14.45 is amended by adding new sections to read:

11 Sec. 14.45.035. STANDARDIZED TESTING REQUIREMENTS. (a) A
12 religious school that elects to comply with this chapter shall admin-
13 ister a nationally standardized test selected by the chief administra-
14 tive officer of the religious school to all students enrolled in
15 grades one, three, six, and nine at least once each school year.

16 (b) The nationally standardized test must measure achievement in
17 English grammar, reading, spelling, and mathematics.

18 (c) A religious school that elects to comply with this chapter
19 shall maintain records of the results of the nationally standardized
20 tests and the records shall be made available to the parent or guar-
21 dian of the student and to authorized representatives of the state.

22 Sec. 14.45.040. RECORDS. A religious school that elects to
23 comply with this chapter shall maintain adequate student records,
24 including records of immunizations, physical examinations, testing,
25 and courses taken at the religious school.

26 Sec. 14.45.045. DEFINITION. In this chapter, "religious school"
27 means a school operated by a church or other nonprofit religious
28 organization that is exempt from federal taxation and does not receive
29 direct state or federal funding.

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* Sec. 7. 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, correspondence courses, adult basic education, and fire-service training, but not including degree programs of postsecondary education or an educational program operated in compliance with AS 14.45 by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive direct state or federal funding;

* Sec. 8. AS 14.45.020 is repealed.

Levv
5/13/83 ✓

Original sponsors: Fritz, Tischer,
Pestinger, et al

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 357 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the regulation of religious
7 schools."

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

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

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

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

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

22 (A) attendance at a private school in which the teach-
23 ers are certificated according to AS 14.20.020;

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

26 (C) except as provided in (D) of this paragraph,
27 attendance at a private school in which the average student
28 proficiency is not less than the average proficiency found in the
29 public schools in the area as measured by national achievement

State Bd. of Educ.

1 tests; the ~~department~~ with assistance from representatives of the
2 private schools shall adopt [PROMULGATE] regulations defining the
3 subject areas to be tested and the minimum average scores to be
4 achieved; or

5 (D) attendance in an educational program operated in
6 compliance with AS 14.45 by a church or other nonprofit religious
7 organization that is exempt from federal taxation and does not
8 receive state or federal funding;

9 * Sec. 3. AS 14.45 is amended by adding a new section to read:

10 Sec. 14.45.025. EXEMPTION FROM EDUCATION LAWS. A religious
11 school that complies with this chapter is exempt from other provisions
12 of state law and regulations relating to education except laws and
13 regulations relating to health, fire safety, sanitation, immunization,
14 and physical examinations.

15 * Sec. 4. AS 14.45.030 is amended to read:

16 Sec. 14.45.030. ATTENDANCE AND ANNUAL REPORTS REQUIRED. (a)
17 Except as provided in (b) and (c) of this section, teachers [TEACHERS]
18 and others in charge of private or denominational schools ^{*including non-religious schools as provided in this chapter*} shall make
19 regular monthly attendance reports and annual reports to the commis-
20 sioner in the same manner as teachers and superintendents in the
21 public schools.

22 * Sec. 5. As 14.45.030 is amended by adding new subsections to read:

23 (b) The parent or guardian of a child enrolled in a religious
24 school that complies with this chapter shall file ^{*an*} ^{*notice of*} annual enrollment
25 ^{*by the religious school*} ~~and attendance records~~ for the child with the public school superin-
26 tendent for the area in which the child resides on a form provided by
27 the public school superintendent. The form shall be signed by the
28 parent and the chief administrative officer of the religious school
29 and returned to the public school superintendent by the parent. The

religious school

1 ~~parent~~ shall notify the public school superintendent immediately if
2 the child is no longer enrolled in or attending the religious school.

3 (c) A religious school that elects to comply with this chapter
4 shall maintain monthly attendance records for each student enrolled in
5 the school and shall operate on a regular schedule, excluding reason-
6 able holidays and vacations, during at least ~~nine calendar months of~~
7 *180 days of the year*
~~the year.~~

8 * Sec. 6. AS 14.45 is amended by adding new sections to read:

9 Sec. 14.45.035. STANDARDIZED TESTING REQUIREMENTS. (a) A
10 religious school that elects to comply with this chapter shall admin-
11 ister a nationally standardized test selected by the chief administra-
12 tive officer of the religious school to all students enrolled in
13 grades one, three, six, and nine at least once each school year.

14 (b) The nationally standardized test must measure achievement in
15 English grammar, reading, spelling, and mathematics.

16 (c) A religious school shall maintain records of the results of
17 the nationally standardized tests and the records shall be made avail-
18 able to the parent or guardian of the student and to authorized rep-
19 resentatives of the state.

20 Sec. 14.45.040. DEFINITION. In this chapter, "religious school"
21 means a school operated by a church or other nonprofit religious
22 organization that is exempt from federal taxation and does not receive
23 state or federal funding.

24 * Sec. 7. AS 44.27.020(1) is amended to read:

25 (1) administer the state's program of education at the
26 elementary, secondary, and adult levels, including, but not limited
27 to, programs of vocational education and training, vocational reha-
28 bilitation, library services, correspondence courses, adult basic
29 education, and fire-service training, but not including degree

Section 6. AS 14.45.030 Sentence addition to paragraph (c).

Such schools shall report annually the number of students enrolled in each grade and provide a copy of the school calendar to the department.

Such schools shall maintain adequate student records, including all information required of public school ^{attendance} or immunization, physical examinations, testing and courses taken while in attendance at the religious school.

1 programs of postsecondary education or an educational program operated
2 in compliance with AS 14.45 by a church or other nonprofit religious
3 organization that is exempt from federal taxation and does not receive
4 state or federal funding;

5 * Sec. 8. AS 14.45.020 is repealed.
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HB 357 TITLE & SPONSOR SUMMARY

12:15 5/21/83 PAGE 1 OF 2

AMENDED TITLE:

AN ACT RELATING TO THE REGULATION OF RELIGIOUS SCHOOLS

PRIME SPONSOR: FRITZ.

CO-SPONSORS: TISCHER, FESTINGER, FURNACE, WARD, FLOOD.

CURRENT STATUS: 5/19/83 IN (H) RULES

HB 357 HOUSE ACTION

12:15 5/21/83 PAGE 2 OF 2

DATE SEQ PAGE

LEGISLATIVE ACTION

04/14/83 01 0861
05/19/83 02 1426
05/19/83 03 1427

FIRST READING -- COMMITTEE REPORTS
HESS -- CS05
HESS F/NOTE EQUALS ZERO
RULES

**** ** **

*** ** *

REF. MAE TISCHER
CO-CHAIRMAN

REP. MILO FRITZ
CO-CHAIRMAN



MEMBERS:
REP. MIKE MILLER
VICE CHAIRMAN
REP. BETTE CATO
REP. MIKE DAVIS
REP. PETER GOLL
REP. NIILLO KOPONEN

House of Representatives

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

M E M O R A N D U M

TO: House HESS Committee DATE: May 12, 1983

FROM: Linda Otey, Committee Staff

RE: Summary/ HB 357 "An Act relating to the regulation of religious schools"

Enclosed is material that has been gathered in an attempt to more clearly understand the issue of 'de-regulation' of church schools while maintaining some monitoring of the constitutional mandate to provide for public education. A sectional analysis of the bill has been provided by Legislative Counsel. He suggests that HB 357, as written, is probably unconstitutional with respect to the equal protection clauses of the State & Federal Constitutions.

"The bill exempts certain private schools from requirements that apply to all other private schools..."

With the understanding of the desire and need to resolve this issue legislatively, staff has contacted Ms. Patricia Lines, Director of Law & Education Center of the Education Commission of the States (ECS), Denver, Colorado. Ms. Lines has been working on this issue nation-wide and is extremely well versed in the objectives it encompasses. Her article, State Regulation of Private Education is enclosed for your review. Ms. Lines has been very helpful and has emphasized the need for legislative resolve through investigation of current regulation as well as the interest and need for religious school de-regulation and how best the two goals can work together. Ms. Lines also suggested that it would be in the best interest of expeditious and sound legislation for the issue to be dealt with away from the political arena; allowing each interest room for rational communication and resolution.

This issue is not easily addressed as it actually raises three constitutional issues:

- 1). Separation of Church & State - First Amendment, U.S. Constitution
- 2). Equal Protection Clause - Fourteenth Amendment, U.S. Const. & Art. 1, Sec. 1, Ak. Const.
- 3). Providing Public Education - Art 7, Sec 1, Ak. Const. & U.S. Const.

With the advice of our Legislative Counsel, in approaching the Alaska Statutes for revision, these three issues must be carefully meshed in order to be effectively implemented. A proposed Committee Substitute will be forthcoming.

folder content:

left
bill & statutes
Pre-Elem Regulations
Fiscal Note Ø

right
Summary
Sectional/Levy
Pat Lines Article

National Comparison
ECS Report
Comments/Glover

H B

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2



HOUSE CALENDAR

OFFICIAL BUSINESS OF THE HOUSE

ONE HUNDRED TWENTY-SEVENTH DAY

Monday

CHAPLAIN:
Michael McKennett
Bahai Juneau Assembly

Convenes: 10:00 a.m.
May 23, 1983

SECOND READING OF HOUSE BILLS

HB 357 "An Act relating to the regulation of religious schools."
-HESS report w/CS(HESS), same title, p. 1426
Zero Fiscal Note
-Pules report w/CS(Rls), same title, forthcoming

CITATIONS

*Honoring - Robert and Donna Blair by Representatives Zharoff, Cato
*In Memoriam Kevin Konls by Representatives Duncan, M.M. Miller

Standing Committee Announcements on back -- subject to change.

HOUSE

** indicates first public hearing

DAILY COMMITTEE ANNOUNCEMENTS

DATE: MONDAY, MAY 23, 1983

Prepared by the Chief Clerk's Office

COMMUNITY & REGIONAL AFFAIRS 465-4894	JUDICIARY 465-4990	RULES 465-3789
<p>Capitol 205 - 3:15 - 5pm, M - F</p> <p>**HB 396 (Audit and financial statement requirements)</p>	<p>Capitol 124 - 1:30 pm</p> <p>HB 345 (victim's rights/sentencing & parole hearings/furlough determinations/person convicted of a felony)</p> <p>SSHB 374 (est./maximum security prison facilities at Anderson and Palmer/Sutton)</p> <p>HB 217 (est./prison facilities)</p> <p>HB 275 (est./prison facilities)</p> <p>SB 167 (correction facilities, good time compensation, and imprisonment & rehabilitation of offenders)</p> <p>CSSJR 19(Jud) (Recommending Alaska Board of Dental Examiners/suspend Goodman's lic.)</p> <p>HB 14 (processing permits by state agencies)</p>	<p>BELTZ ROOM - 8:30 a.m.</p> <p>HB 357 (regulation of religious schools)</p> <p>HJR 42 (est./sister state relationship with Taiwan)</p>
FINANCE 465-3706	LABOR & COMMERCE 465-3892	STATE AFFAIRS 465-4963
<p>Capitol 519</p> <p>1:30 pm - House Finance Committee</p> <p>HB 203 (sp. approp./DOTPF/Phase I of the Nome Port Facility)</p> <p>HB 413 (creation/Capital Area Historic Properties Advisory Commission)</p> <p>HB 436 (Exempting public utility income from the net income tax)</p>	<p>Behrends Conf. rm. 209 - 8:45 - 10:00am</p> <p>SB 263 (notices for occupational safety and health violations)</p>	<p>Capitol 102 - 1:00pm</p> <p>CSSB 132(SA) (est./Alaska Administration Journal)</p> <p>SB 190 (sp. approp./grants/Wrangell Totem Poles & Chief Shakes Island Preservation & Restoration Proj./for Sealaska Heritage Foundation Language and Cultural Studies Program)</p> <p>SB 294 (compensation of state officers and employees not covered by collective bargaining)</p>
HEALTH, EDUCATION, & SOCIAL SERVICES	RESOURCES 465-3715	TRANSPORTATION 465-4858
<p>Capitol 112 - MWF - 1-3pm 465-3777</p> <p>To be announced</p>	<p>Capitol 118 - 3-5pm</p> <p>HB 376 (amending the Limited Entry Act.)</p>	<p>Capitol 112, 8:30am</p> <p>SCR 5 (Requesting DOTPF/reconstruct and upgrade Petersville Road in Mat-Su Borough)</p> <p>SCR 6 (Encouraging the upgrading and resurfacing of the old Glenn Hwy from the Knik River to the Matanuska River)</p>



Alaska State Legislature

Thirteenth Legislature — First Session

Senate Calendar

MONDAY
May 23, 1983
11:00 a.m.

Official Business of the Senate

One Hundred Twenty-seventh Legislative Day

Chaplain: Jon Padden of the Church of Christ

SECOND READING OF SENATE BILLS

SSSB 277 Benefits under the public employees' retirement system
_____ eff. date
(L&C offered CS, pg 976, FY note in Senate Supplement No. 28, Finance report, with Letter of Intent pg 1001, FY Note in Senate Supplement No. 29)

SENATE BILLS IN SECOND READING

SB 133 Corrective amendments to the Alaska Statutes as recommended by the revisor of statutes
_____ eff. date.
(Judiciary offered CS, pg 900, FY note in Senate Supplement No. 24 and zero FY note, Judiciary CS moved and pending, held from May 20)

SENATE BILLS IN THIRD READING

CSSB 169(Res) Establishing the Alaska grain reserve program and the Alaska grain reserve loan fund
_____ eff. date
(held from May 20)

SECOND READING OF SENATE RESOLUTIONS

SJR 12 Opposing the extension of the provisions of the Export Administration Act of 1979 that effectively bans the export of Alaska North Slope oil
(Resources report, pg 798, Judiciary offered CS, pg 999 new title, Rules offered CS today)

OVER

Senate Calendar continued
5/23/83

PUBLICATION NOTICE -Tuesday Calendar-

Honoring - Melissa Chaney by Representative Herrmann and Senator Mulcahy

Honoring - Eugenie Williams by Representative Grussendorf and Senator Eliason

Honoring - Kotzebue Civil Air Patrol by Representative Adams and Senator Ferguson

In Memoriam - Gordon MacDonald by Representatives Davis, Koponen, M. W. Miller, Bettisworth and Senators Fahrenkamp, Bennett and Moss



* HONORING - ROBERT AND DONNA BLAIR *

The members of the 13th Alaska Legislature wish to honor two truly amazing Alaskans who have, through an abundance of generosity and humanity, taken on the task of raising a family of 18 children!

Parents of eight children of their own, the Blair's have, through the years, opened their home and their hearts to children from other lands who are without parents. Children from Korea and India have now found a warm, loving environment here in Alaska through the totally selfless efforts of these fine Alaskans. Young people who might otherwise lead dismally bleak futures are now being educated and raised in a healthy and wholesome family setting.

Much of the news that makes the headlines today has to do with the selfish and uncaring acts of people with no interest other than their own comfort and pleasure. For that reason, and many, many others, it gives each of us genuine pleasure to be able to recognize the exceptional efforts of Robert and Donna Blair.


On behalf of all of the citizens of our State we wish to extend to them, and to the children, our fondest warm wishes and commendations. Bless you for your humanity. You have our highest respect and admiration.

SPEAKER OF THE HOUSE

PRESIDENT OF THE SENATE

Date:

Requested by: Representative Zharoff *v. C. Zharoff*



In Memoriam

* KEVIN KOHLS *

The members of the Legislature were deeply saddened to learn of the tragic and untimely death of a valiant young Alaskan, Kevin Kohls of Juneau.

The son of Frederick and Shirley Kohls, Kevin, an enthusiastic, vital and active young man, succumbed to cancer after a lengthy battle with the disease. Kevin was born in Juneau in 1967 and attended school here. He played the piano and the trombone, was a member of the Civil Air Patrol, an active skiing enthusiast and was universally admired and respected.

We are deeply grieved that so fine and promising a young man has been taken from us and our hearts go out to Fred and Shirley and other members of the family. Many friends are equally stricken at this loss since many of them had personal knowledge of the courageous and silent battle Kevin waged against the disease.

We mourn Kevin's death. We share the grief and sense of loss experienced by Fred and Shirley Kohls. We pause for a moment to reflect on the sadly short, promising life of this fine young man and do so with total admiration for his cheerfulness and strength. The example he set will long be remembered.

SPEAKER OF THE HOUSE

PRESIDENT OF THE SENATE

Date:

Requested by: Representatives Duncan and
M. M. Miller

Levy
5/13/83 ✓

Original sponsors: Fritz, Tischer,
Pestinger, et al



BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 357 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the regulation of religious
7 schools."

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

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

10 (8) in cooperation with the Department of Health and Social
11 Services, exercise general supervision over public and private pre-
12 elementary schools and over the educational component of nurseries as
13 defined in AS 47.35.080(4) excluding pre-elementary schools and nur-
14 series operated by a church or other nonprofit religious organization
15 that is exempt from federal taxation and does not receive ^{direct financial} state or
16 federal funding; pre-elementary schools in this paragraph means
17 schools for children ages three through five years when the schools'
18 primary function is educational;

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

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

22 (A) attendance at a private school in which the teach-
23 ers are certificated according to AS 14.20.020;

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

26 (C) except as provided in (D) of this paragraph,
27 attendance at a private school in which the average student
28 proficiency is not less than the average proficiency found in the
29 public schools in the area as measured by national achievement

1 tests; the department with assistance from representatives of the
2 private schools shall adopt [PROMULGATE] regulations defining the
3 subject areas to be tested and the minimum average scores to be
4 achieved; or

5 (D) attendance in an educational program operated in
6 compliance with AS 14.45 by a church or other nonprofit religious
7 organization that is exempt from federal taxation and does not
8 receive state or federal funding;

9 * Sec. 3. AS 14.45 is amended by adding a new section to read:

10 Sec. 14.45.025. EXEMPTION FROM EDUCATION LAWS. A religious
11 school that complies with this chapter is exempt from other provisions
12 of state law and regulations relating to education except laws and
13 regulations relating to health, fire safety, sanitation, immunization,
14 and physical examinations.

15 * Sec. 4. AS 14.45.030 is amended to read:

16 Sec. 14.45.030. ATTENDANCE AND ANNUAL REPORTS REQUIRED. (a)
17 Except as provided in (b) and (c) of this section, teachers [TEACHERS]
18 and others in charge of private or denominational schools shall make
19 regular monthly attendance reports and annual reports to the commis-
20 sioner in the same manner as teachers and superintendents in the
21 public schools.

22 * Sec. 5. As 14.45.030 is amended by adding new subsections to read:

23 (b) The parent or guardian of a child enrolled in a religious
24 school that complies with this chapter shall file annual enrollment
25 and attendance records for the child with the public school superin-
26 tendent for the area in which the child resides on a form provided by
27 the public school superintendent. The form shall be signed by the
28 parent and the chief administrative officer of the religious school
29 and returned to the public school superintendent by the parent. The

Rel. school
1 parent shall notify the public school superintendent immediately if
2 the child is no longer enrolled in or attending the religious school.

3 (c) A religious school that elects to comply with this chapter
4 shall maintain monthly attendance records for each student enrolled in
5 the school and shall operate on a regular schedule, excluding reason-
6 able holidays and vacations, during at least nine calendar months of
7 the year.

8 * Sec. 6. AS 14.45 is amended by adding new sections to read:

9 Sec. 14.45.035. STANDARDIZED TESTING REQUIREMENTS. (a) A
10 religious school that elects to comply with this chapter shall admin-
11 ister a nationally standardized test selected by the chief administra-
12 tive officer of the religious school to all students enrolled in
13 grades one, three, six, and nine at least once each school year.

14 (b) The nationally standardized test must measure achievement in
15 English grammar, reading, spelling, and mathematics.

16 (c) A religious school shall maintain records of the results of
17 the nationally standardized tests and the records shall be made avail-
18 able to the parent or guardian of the student and to authorized rep-
19 resentatives of the state.

20 Sec. 14.45.040. DEFINITION. In this chapter, "religious school"
21 means a school operated by a church or other nonprofit religious
22 organization that is exempt from federal taxation and does not receive
23 state or federal funding.

24 * Sec. 7. AS 44.27.020(1) is amended to read:

25 (1) administer the state's program of education at the
26 elementary, secondary, and adult levels, including, but not limited
27 to, programs of vocational education and training, vocational reha-
28 bilitation, library services, correspondence courses, adult basic
29 education, and fire-service training, but not including degree

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programs of postsecondary education or an educational program operated in compliance with AS 14.45 by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding;

* Sec. 8. AS 14.45.020 is repealed.

Levy
5/13/83 ✓

Original sponsors: Fritz, Tischer,
Pestinger, et al

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

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28 proficiency is not less than the average proficiency found in the
29 public schools in the area as measured by national achievement

STATE BOARD

1 tests; the department with assistance from representatives of the
2 private schools shall adopt [PROMULGATE] regulations defining the
3 subject areas to be tested and the minimum average scores to be
4 achieved; or

5 (D) attendance in an educational program operated in
6 compliance with AS 14.45 by a church or other nonprofit religious
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8 receive state or federal funding;

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16 *Boylan*
17 Sec. 14.45.030. ATTENDANCE AND ANNUAL REPORTS REQUIRED. (a)
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22 public schools.

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24 (b) The parent or guardian of a child enrolled in a religious
25 school that complies with this chapter shall file ^{an} annual ^{notice of} enrollment
26 ~~and attendance records~~ ^{in the religious school} for the child with the public school superin-
27 tendent for the area in which the child resides on a form provided by
28 the public school superintendent. The form shall be signed by the
29 parent and the chief administrative officer of the religious school
and returned to the public school superintendent by the parent. The

religious school
 1 parent shall notify the public school superintendent immediately if
 2 the child is no longer enrolled in or attending the religious school.

3 (c) A religious school that elects to comply with this chapter
 4 shall maintain monthly attendance records for each student enrolled in
 5 the school and shall operate on a regular schedule, excluding reason-
 6 able holidays and vacations, during at least ^{180 days} ~~nine calendar~~ months of
 7 the year.

8 * Sec. 6. AS 14.45 is amended by adding new sections to read:

9 Sec. 14.45.035. STANDARDIZED TESTING REQUIREMENTS. (a) A
 10 religious school that elects to comply with this chapter shall admin-
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 18 able to the parent or guardian of the student and to authorized rep-
 19 resentatives of the state.

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 29 education, and fire-service training, but not including degree

1 programs of postsecondary education or an educational program operated
2 in compliance with AS 14.45 by a church or other nonprofit religious
3 organization that is exempt from federal taxation and does not receive
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Section 6. AS 14.45.030 Sentence addition to paragraph (c).

Such schools shall report annually the number of students enrolled in each grade and provide a copy of the school calendar to the department.

Such schools shall maintain adequate student records, including all information required of public schools on ^{attendance,} immunization, physical examinations, testing and courses taken while in attendance at the religious school.

May 11, 1983
P.O. Box 376
Douglas, Ak.99824

Representative Mae Tischer
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Representative Tischer:

I enclose an article taken from the book, Rebirth of Our Nation, by Donald R. Howard, P.H.D. which explains why Eagle Forum members across our state cannot ever support licensing of private schools.

Basically the reasons include:

Licensing paves the way for loss of freedom of religion, it entangles the State with the Church and it violates parental rights, which is recognized by nature, history, the state, and law.

Farrington v. Takushige, 1927
Meyer v. Nebraska, 1923
Pierce v. Society of Sisters, 1925
Wisconsin v. Yoder, 1972

Let's work together to end atrocities constitutionally, while protecting the unalienable rights built into the foundation of our great nation."

Please support HB 357 and SB 261.

Sincerely,

Sue Miller

Sue Miller
Pres. Eagle Forum
Juneau/Douglas Chp.

V. PRACTICALLY

• We agree that there are atrocities. We disagree about how to eliminate them.

1. Licensure is ineffective. Never has there been more licensure, certification, accreditation, registration, and approval, but never have there been more atrocities. Children are kept in cages; one child dies. Where? In a licensed facility. Jim Jones types stand first in line to receive their licenses. They need such to make their "ministries" appear legitimate to the public and acceptable to receive thousands of dollars in government funds.
2. Licensure is duplicative. Why do we need two bureaucrats to check the same thing? Fire marshals and welfare workers check the same things, sometimes with conflicting re-

quirements. Why couldn't churches be checked by local fire marshals, health officers, and building inspectors who point out compelling interest areas, regulation by regulation, but without licensure? If conflict arose concerning a particular regulation, the recourse would be the court which could decide compelling interest.

3. Licensure is subjective. Someone said OSHA's new building in Washington violates over 1,700 of its own regulations. Everyone under administrative standards realizes the standards mean one thing to one representative, and another thing to a different representative. With the 1,600 minimum standards for schools in Ohio, you could close any school (government or private) in the state. Under oath, one of the heads of the Ohio education department admitted he did not know of even one school in the whole state which met the standards. This licensure can be a vicious weapon in the hands of a discriminating representative. Would some "Baptist" inspector tend to overpower a "Mormon" day care?
4. Licensure is inconsistent. Again and again the State is saying a certain standard is necessary to make the building safe on Monday but unnecessary on Sunday. A room is considered safe for 130 children on Sunday but unsafe for 25 children on Monday. Compelling interest would require consistent protection on every day. If it is right to license the Christian Monday school, it is right to license the Sunday school. If the State must license the day care, the State must also license the nursery on Sunday morning. There is no difference. Children are on the church premises on Sunday without the parents being present. Academics are taught in the Sunday school. Child care takes place on Sunday. Money is given on Sunday. What's the difference?
5. Licensure is hypocritical. "The worst place a teenager can be today is in the public school system," said Joseph Califano (Secretary of H.E.W.) The National Institute of Education reports \$600 million in vandalism, 5,000 teachers assaulted, 1 out of 80 children attacked on school property, etc. Rapes, narcotics, and murder have brought guards into the hallways — all in licensed state-run facilities. Yet the same things are nonexistent in the better than 10,000 Christian schools. Why would the Christian ministries need the advice, approval, and licensure of the State? Better, the State should learn from the church. Why would parents pay \$60 or more per month in addition to their school taxes for the privilege of placing their child in an institution inferior to the one just down the street *where the child could enter free?*

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 14, 1983

SUBJECT: Regulation of religious schools
(CSHB 357 (HESS))

TO: Representative Milo Fritz
Chairman, Health, Education, and
Social Services Committee

FROM: Keith B. Levy *KBL*
Legislative Counsel

Enclosed is a copy of CSHB 357 (HESS), relating to the regulation of religious schools. The bill raises a number of constitutional questions. Because these constitutional requirements must be balanced against one another, there is virtually no way to guarantee that the bill is valid. In my opinion, however, the bill does a good job of balancing the constitutional requirements and is probably not unconstitutional.

In regulating religious schools, the state must consider the "free exercise" and "establishment" clauses of the state and federal constitutions. These provisions essentially prohibit the state from unduly burdening the free exercise of religion and from becoming so involved in the regulation of religious schools as to encourage or inhibit religious activity. On the other hand, the "equal protection" clauses of the state and federal constitutions require the state to justify treating religious schools differently from other private schools. Moreover, while the state may not excessively regulate religious schools, it also has an obligation to provide a reasonable education to school age children. Reconciling these different interests with one another is no easy task and it is difficult to predict which of these will take precedence in the courts.

CSHB 357 (HESS) exempts certain religious schools from all state laws and regulations relating to education except laws concerned with health, fire safety, sanitation, immunization, and physical examinations if the schools agree to comply

with certain minimal statutory requirements. The schools affected by the bill are those that are operated by a church or other religious organization that is exempt from federal taxation and do not receive state or federal funding (AS 14.45.040). Children attending these schools are exempt from the state's compulsory attendance law (AS 14.30.010). The schools that opt to comply with the minimal statutory requirements must maintain attendance and enrollment records (AS 14.45.030(b)), notify the public school superintendent if a child is no longer enrolled or attending (AS 14.45.030(b)), administer a nationally standardized test to be selected by the individual schools that measures English grammar, reading, spelling, and mathematics (AS 14.45.035), and operate on a regular nine month schedule (AS 14.45.030(c)). Parents of children attending these schools must file enrollment and attendance records with the local public school superintendent (AS 14.45.030(b)). Religious schools that choose not to comply with these standards remain subject to the same regulations as all other private schools.

The First Amendment to the United States Constitution and Article I, section 4 of the Constitution of the State of Alaska provide

No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.

The free exercise clause has been interpreted to mean that the state may not unduly burden the right of a parent, child, or church to freely exercise a particular religion, unless the state can show a compelling state interest. Sherbert v. Verner, 374 U.S. 398 (1968). Even when the state can show a compelling interest in regulating religious schools, it must also show that the regulation is by the least burdensome means.

CSHB 357 (HESS) allows the state to regulate health and safety standards, to require certain standardized tests, and to assure regular attendance by the children. None of these requirements appears to be unduly burdensome on the free exercise of religion. The state clearly has a compelling interest in maintaining health and safety standards and these standards, if reasonable, generally have no connection to the exercise of religion. The interest justifying the standardized test requirement is the state's obligation to provide an education for children. The requirement is not unduly burdensome because the individual schools are

permitted to select the test of their choice provided that the test measures achievement in certain basic areas. Beyond that, the bill does not regulate curriculum in the religious schools. Finally, the bill requires certain attendance reports from the schools and the parents of children attending them. Again, the reporting requirements are minimal and are justified by the state's interest in assuring that the children are receiving an education. Accordingly, the bill probably does not infringe on the right to the free exercise of religion.

The analysis of the bill under the establishment clause is similar to that under the free exercise clause. Legislation must be substantially neutral toward religion. Epperson v. Arkansas, 393 U.S. 97 (1968). Excessive entanglement in the regulation of religious organizations is not permitted. Lemon v. Kurtzman, 403 U.S. 602 (1971).

The bill minimizes the state's involvement in regulating religious schools by exempting them from the state's general education regulations if the schools agree to comply with certain minimal standards. Of these standards, the only one that might present a problem by excessively involving the state in the regulation of religion is the attendance reporting requirement. In Surinach v. Pesquera de Busquets, 604 F.2d 73 (1st Cir. 1979), the court found state requirements that religious schools release extensive financial and other data unconstitutional. The statute challenged in that case can be distinguished from CSHB 357 (HESS), however, because the bill only requires attendance reports, the reports must be released by the parents, and they can be justified by the state's obligation to ensure that children receive an education. The attendance reports are probably not an excessive entanglement by the state in the regulation of religious schools.

The equal protection clauses of the Fourteenth Amendment of the United States Constitution and Article I, section 1 of the Constitution of the State of Alaska require the state to justify the statutory creation of a class based on religion. The classification

. . . 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).
CSHB 357 (HESS) creates a class of religious schools which are exempt from most state regulations that apply to other private schools. Since the exemptions are substantially tied to the free exercise of religion, however, they can be justified on the basis that there is a substantial relationship between the exemptions and the goal of the legislation. Only if the exemptions were not tied to the exercise of religion or some other valid governmental purpose would the bill violate the equal protection clause.

The bill's deregulation of religious schools may raise a problem with respect to the state's obligation to provide an education to all children in the state. It is not clear, however, that this obligation is mandated by the constitution. Article VII, section 1 of the Constitution of the State of Alaska provides, in part,

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions.

It is not clear whether this provision merely obliges the state to provide the opportunity for an education to all children of the state, or if it includes the obligation to ensure that they actually receive an education. If the latter is true, then the state would be restricted in the degree to which it may deregulate religious schools. Even if that is the case, however, CSHB 357 (HESS) probably does impose sufficient requirements on the religious schools to ensure a minimal level of quality of education. Thus, the bill probably does not violate any obligation the state has to provide an education to children in the state.

In conclusion, CSHB 357 (HESS) is probably constitutional although the necessary balancing of constitutional requirements makes it difficult to be certain of this. Ideally, legislation regulating religious schools will place minimal burdens on the schools and require minimal state involvement while requiring the schools to meet minimal educational requirements to ensure that the children are receiving an education. In my opinion, the bill successfully strikes this balance.

Alaska State Legislature

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House of Representatives

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

To: Chief Clerk

Date: 5/13/83

From: House HESS Committee Staff *[Signature]*

Re: Notice of Hearing/ Proposed CSHB 357

In addition to the HESS Committee's scheduled calendar for Monday, May 16, the Committee will take testimony in regard to the proposed CS for HB 357 (HESS) at 1.p.m. in room 112 of the Capitol Building.

HB 357 - Religious School

Dr Dan Hayek - Favours - FRks

Waldo Arden - Anch - Favours - suggests using denominational instead of religious. Also include private schools

Eunice Catalini - Mat-Sue - Fischer - Palmer Christian Schools - Favours

Dean Hoag - Kodiak - no comments

Mary Barnes (RW) Cordova - Concerned about diplomas receiving & recognized by state.

Vera Strecaner - Ketchikan -

Robert Wallace - favours

Steve P. Sloner - Anch -

Curtis Smith - Favours - Parent of 2 who attend Christian sch.

Norman Sanders - Kikuli School - ^{substitute} fair to both church & state.

Laurens Olson - Unalakleet -

Ronnie Starr - Fort Yukon - Baptist / private Christian School - Supports

Tab Bergman - " " - wants passage.

Mrs. Bailey - " " - favours bill. parents have a right to choose

Norma Trentout - FRks Eagle Forum } Children's education.

Jim Rice - Parent w/ children in both state & church schools. wants nothing from the state, no watered down sub.

Mary Brooks - Anch - Harvester - DOE Regs. proposed - discussed these regs for the record & talked about what was left out & how this restricts & controls the church ministry

Ployd Bellamy - Arch - Quotes Pres. Reagan - we should be
consistent w. Pres. "Excellence in Ed

Janet Morgan - Mat Sue - Elementary teacher Christian Schools.

Heather Morgan - Student.

Beane Haug - Haug - Kodak.

Chuck Crasuchatto - Soldotna - Independent non-religious
schools. "Direct financial

^{Vanderwey of}
~~Ruth Rindlow~~ - Ketchikan - 4th grade ^{language} Christian School
^{Chm of Leadership Group}

Rebecca Dobb - Ft Yukon -

- - - - " " - 2 children in Christian School

Eline Becker - Homer - Chm of Board " 52 students
Children also in school.

Est Williams - FBks - Support - parent of 9 children in Private
& public school. Private surpasses.

Curtis Westgard - Kodiak - Conditional issue. supports bill.
Mat Sue -

Pete Harvey - Soldotna. - Kalifonky, Administrator - tells that
Religious Churches began education
as we know it & that govt has made
it secular.

Miss Grossman - FBks

& many more

Jack Becker. Pastor

Wolfgang Falke - FBks - wants (Pg I sec I) repealed rather
than amend.

Grall Cope - Supports - Resents Public School irresponsibility
to Ed. secular, atheist,

Daniel Glover - Arch - Primary function of the Church is
Education.

Margaret Green - Monocorey school. private

Attley - wants letter of Intent to clarify
any language open for (attack)

Brent Carney -

Steve Hole - wants: school calendar
enrollment & grade

Wm Brown - Principal Blaine Colby Academy.
Acad. Standards

1. Attendance Chs is better than Public
2. Testing
- 3.

Bill Blue - Serious with genius child

Introduced: 4/14/83
Referred: Health, Education &
Social Services

BY FRITZ, TISCHER, PESTINGER,
FURNACE, WARD AND FLOOD

1 IN THE HOUSE

2

HOUSE BILL NO. 357

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the regulation of religious
7 schools."

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

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

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

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

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

22 (A) attendance at a private school in which the teach-
23 ers are certificated according to AS 14.20.020;

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

26 (C) except as provided in (D) of this paragraph,
27 attendance at a private school in which the average student
28 proficiency is not less than the average proficiency found in the
29 public schools in the area as measured by national achievement

1 tests; the department with assistance from representatives of the
2 private schools shall adopt [PROMULGATE] regulations defining the
3 subject areas to be tested and the minimum average scores to be
4 achieved; or

5 (D) attendance in an educational program operated by a
6 church or other nonprofit religious organization that is exempt
7 from federal taxation if the program does not receive state or
8 federal funding;

9 * Sec. 3. AS 14.45.020 is amended to read:

10 Sec. 14.45.020. COMMISSIONER MAY FURNISH EXAMINATION QUESTIONS
11 FOR AND GRANT DIPLOMAS TO EIGHTH GRADE PUPILS. The commissioner may
12 furnish final examination questions for the eighth grade pupils in
13 private [AND DENOMINATIONAL] schools not operated by a church or other
14 nonprofit religious organization that is exempt from federal taxation
15 and does not receive state or federal funding and grant eighth grade
16 diplomas in the same manner as in the public schools.

17 * Sec. 4. AS 14.45.030 is amended to read:

18 Sec. 14.45.030. ATTENDANCE AND ANNUAL REPORTS REQUIRED. Teach-
19 ers and others in charge of private [OR DENOMINATIONAL] schools not
20 operated by a church or other nonprofit religious organization that is
21 exempt from federal taxation and does not receive state or federal
22 fund:ng shall make regular monthly attendance reports and annual
23 reports to the commissioner in the same manner as teachers and super-
24 intendants in the public schools.

25 * Sec. 5. AS 44.27.020(1) is amended to read:

26 (1) administer the state's program of education at the
27 elementary, secondary, and adult levels, including, but not limited
28 to, programs of vocational education and training, vocational reha-
29 bilitation, library services, correspondence courses, adult basic

1 education, and fire-service training, but not including degree pro-
2 grams of postsecondary education or an educational program operated by
3 a church or other nonprofit religious organization that is exempt from
4 federal taxation if the program does not receive state or federal
5 funding;

Article

1. Department of Education (Sec. 14.07.010—14.07.070)
2. State Board of Education and Commissioner of Education (Sec. 14.07.075—14.07.170)

Article 1. Department of Education

Section

10. Department of Education
20. Duties of the department
30. Powers of the department
40. Repealed
50. Selection of textbooks
52. Repealed

Section

53. Alaska School Activities Association
54. Alaska School Activities Fund
55. Repealed
57. Transmittal selections
60. Promulgation of regulations
70. Withholding state funds

Sec. 14.07.010. Department of Education. The Department of Education includes the commissioner of education, the State Board of Education, and the staff necessary to carry out the functions of the department. (Sec. 1 ch 98 SLA 1966)

Sec. 14.07.020. Duties of the department. The department shall

- (1) exercise general supervision over the public schools of the state except the University of Alaska;
- (2) study the conditions and needs of the public schools of the state and adopt or recommend plans for the improvement of the public schools;
- (3) provide advisory and consultative services to all public school governing bodies and personnel;
- (4) prescribe by regulation a minimum course of study for the public schools;
- (5) establish, in coordination with the Department of Health and Social Services, a program for the continuing education of children who are held in detention facilities in the state during the period of detention;
- (6) accredit those public schools which meet accreditation standards prescribed by regulation by the department; these shall be adopted by the department and presented to the legislature during the first 10 days of any regular session, and become effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house; (am Sec. 1 ch 126 SLA 1978)
- (7) prescribe by regulation, after consultation with the Department of Health and Social Services, standards that will assure healthful and safe conditions in the public and private schools of the state; the standards for private schools may not be more stringent than those for public schools; (am Sec. 2 ch 126 SLA 1978)
- (8) in cooperation with the Department of Health and Social Services, exercise general supervision over public and private preelementary schools and over the educational component of nurseries as defined in AS 47.35.080(4); preelementary 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.
(Sec. 1 ch 98 SLA 1966; am Sec. 2 ch 69 SLA 1971; am Sec. 6 ch 104 SLA 1971; am Sec. 1 ch 190 SLA 1975; am Sec. 6 ch 50 SLA 1977)
- (10) 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 the extent of eligibility for state aid of a school construction project begun after the effective date of this act; for purposes of this paragraph, a "plan" includes educational specifications, schematic designs, and final contract documents.
- (11) accredit private elementary and secondary schools which request accreditation and which meet accreditation standards prescribed by regulation by the department.
(am Sec. 3 ch 126 SLA 1978)
- (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. (am Sec. 1 ch 86 SLA 1979)

Sect 1 →

Sec. 14.07.030. Powers of the department. The department may

- (1) establish, maintain, govern, operate, discontinue, and combine area, regional, and special schools;
- (2), (3) and (4) Repealed Sec. 1 ch 205 SLA 1970.
- (5) enter into contractual agreements with the Bureau of Indian Affairs or with a school district to share boarding costs of secondary school students;
- (6) provide for citizenship night schools when and where expedient;
- (7) provide for the sale or other disposition of abandoned or obsolete buildings and other state-owned school property;
- (8) prescribe a classification for items of expense of school districts;
- (9) acquire and transfer personal property, acquire real property, and transfer real property to federal agencies, state agencies, or to political subdivisions;
- (10) enter into contractual agreements with school districts to provide more efficient or economical educational services;
- (11) provide for the issuance of elementary and secondary diplomas to persons not in school who have completed the equivalent of an eighth or twelfth grade education, respectively, in accordance with standards established by the department;
- (12) exercise disapproval power under AS 14.08.100. (Sec 1 ch 98 SLA 1966; am Sec 1 ch 66 SLA 1968; am Sec 2, 3, 4 ch 46 SLA 1970; am Sec 1 ch 161 SLA 1975)

Sec. 14.07.040. Repealed. (Sec 34 ch 46 SLA 1970)

Sec. 14.07.050. Selection of textbooks.

(a) Textbooks for use in the public schools of the state shall be selected by district boards for district schools. J by a State Schools Textbook Committee appointed by the director for state schools. Selections of the State Schools Textbook Committee shall be submitted to the Board of Directors for State-Operated Schools for approval or rejection.

(b) However, a district may elect to adopt the selection of the State Schools Textbook Committee. (Sec 1 ch 98 SLA 1966; am Sec 1 ch 96 SLA 1970; am Sec 2 ch 205 SLA 1970)

Sec. 14.07.052. Repealed. (Sec 2 ch 96 SLA 1970)

Sec. 14.07.053. Alaska School Activities Association.

(a) There is created within the Department of Education the Alaska School Activities Association.

(b) The purposes of the association are to provide for the efficient governing of interscholastic activities through the promotion of those activities and other inter-school contests or programs sanctioned by the association and to assist in the promotion of those other activities and interests as may from time to time elect.

(c) A public or private school or school district in the state may become a member of the association if it applies for membership. The Department of Education shall make applications available to all public or private schools or school districts in the state.

(d) The governing body of the association shall be the board of control with at least one member from each judicial district on the board of control. A member of the board shall be elected from each regional activities association by the members of that region. The term of office for each member is two years, except that one-half of the members elected to the first elected board shall be elected for one-year terms under regulations prescribed by the commissioner of education.

(e) The board in consultation with the Department of Education shall appoint an executive secretary, prescribe his duties and fix his compensation. He shall serve at the pleasure of the board.

(f) The board of control of the existing Alaska High School Activities Association in office on the effective date of this Act shall serve as the initial board of control for no longer than six months.

(g) The Department of Education shall approve the association's constitution and bylaws to ensure that all regions of the state are treated on an equitable basis and in the best interests of the state. (Sec 1 ch 128 SLA 1976)

Sec. 14.07.054. Alaska School Activities Fund.

(a) The Alaska school activities fund is established within the Department of Education.

(b) The commissioner of education shall review the budget request of the Alaska School Activities Association and request a sum he approves that is equitable to all regions of the state.

(c) School districts and member schools of the Alaska School Activities Association may appropriate money to the fund. (Sec 1 of 128 SLA 1976)

Chapter 30. Pupils

Article	Article
1. Compulsory Education (Sec. 14.30.010 — 14.30.050)	3. Education for Exceptional Children (Sec. 14.30.180—14.30.350)
2. Physical Examinations (Sec. 14.30.060 — 14.30.170)	4. Bilingual-Bicultural Education (Sec. 14.30.400 — 14.30.410)

Article 1. Compulsory Education

Section	Section
10. When attendance compulsory	45. Grounds for suspension or denial of admission
20. Violation	47. Admission or readmission, when cause no longer exists
30. Report of violations and procedures	50. Truant officers
40. Repeated	

Sec 2 → ~~Sec. 14.30.010~~ When attendance compulsory. (a) Every child between seven and 16 years of age shall attend school at the public school in the district in which the child resides during each school term. Every parent, guardian or other person having the responsibility for or control of a child between seven and 16 years of age shall insure that the child is not absent from attendance.

(b) This section does not apply if a child

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

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

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

(C) attendance at 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 of Education 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;

(am Sec. 4 ch 126 SLA 1978)

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

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

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

(5) is temporarily ill or injured;

(6) has been suspended or denied admittance according to sec. 45 of this chapter;

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

(8) is excused by action of the school board of the district at a regular meeting or by the district superintendent subject to approval by the school board of the district at the next regular meeting; (am Sec. 1 ch 10 SLA 1977)

(9) has completed the 12th grade;

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

(11) is equally well-served by an educational experience approved by the school board as serving his educational interests despite an absence from school, the request for excuse is made in writing by his parents or guardian, and approved by the principal or administrator of the school he attends. (am Sec. 1 ch 30 SLA 1976)

(Sec. 37-7-1 ACLA 1949; am Sec. 36 ch 98 SLA 1966; am Sec. 5 ch 71 SLA 1972; am Sec. 5 ch 190 SLA 1975)

(B) a person eligible to be admitted to an accredited postsecondary educational institution; and

(3) establishes financial need in accordance with standards for determining financial need adopted by the committee under 20 USC sec.1070c-2.

(b) The committee shall, by regulation, establish a system of priority in the selection of recipients of grants under sections 930—960 of this chapter under which students from "low income" families or whose incomes are considered "low income" shall be given preference in the award of the educational incentive grants.

Sec. 14.40.950. Limitation on grants. (a) No grant made under sections 930—960 of this chapter may be in an amount less than \$100 nor more than \$1,500 for each academic year.

(b) A grant awarded under sections 930—960 of this chapter may be used by a student only at an accredited postsecondary educational institution.

Sec. 14.40.955. Confidentiality of certain information. All information submitted in support of a determination of financial need as provided in this chapter is confidential. However, an applicant may inspect or copy information from his own application, or records relating to his own application, or authorize release of the application or records to designated individuals or organizations.

Sec. 14.40.960. Definitions. In sections 930—960 of this chapter

(1) "resident" means a person who, except for brief intervals, military service, attendance at an educational or training institution, or for absences for good cause shown, has resided in Alaska and who has maintained his domicile in Alaska; domicile is the true and permanent home of a person from which he has no present intention of moving and to which he intends to return whenever he is away;

(2) "undergraduate" means a student who has not completed a baccalaureate, graduate or professional degree.

(am Sec. 1 ch 51 SLA 1978)

Chapter 45. Private and Denominational Schools

Section	Section
10. Repealed	30. Attendance and annual reports required
20. Commissioner may furnish examination questions for and grant diplomas to eighth grade pupils	

Sec. 14.45.010. Repealed. (Sec. 59 ch 98 SLA 1966)

Sec 3 **Sec. 14.45.020.** Commissioner may furnish examination questions for and grant diplomas to eighth grade pupils. The commissioner may furnish final examination questions for the eighth grade pupils in private and denominational schools and grant eighth grade diplomas in the same manner as in public schools. (Sec. 37-11-2 ACLA 1949)

Sec 4 **Sec. 14.45.030.** Attendance and annual reports required. Teachers and others in charge of private or denominational schools shall make regular monthly attendance reports and annual reports to the commissioner of education in the same manner as teachers and superintendents in the public schools. (Sec. 37-11-3 ACLA 1949)

Chapter 47. Regulation of Educational Institutions. Repealed. (Sec. 5 ch 25 SLA 1976)

Legislative history report. — For report on ch. 190, SLA 1972 (CSHB 499 am), see 1972 House Journal, p. 744.

Sec. 44.25.036. Repayment of loans. Repayment of loans under AS 44.25.030 — 44.25.038 shall be on an annual basis with repayment commencing no later than 90 days after receipt of funds authorized to be appropriated from the Alaska Native Fund to the regional corporation under § 6(a) (1) (A), P.L. 92-203. (§ 1 ch 190 SLA 1972)

Sec. 44.25.038. Expiration of loan program. Because the purposes for which the loan program is created are limited, no loan may be made after five years from October 4, 1972. The program shall be inoperative 10 years from October 4, 1972. (§ 1 ch 190 SLA 1972)

Effect amendm "element including vocation: "element ing prog

Section 40. Crea 41. Com 42. App 43. Terr 44. Com 45. Cha

Chapter 27. Department of Education.

Article

- 1. Board and Department of Education (§§ 44.27.010 — 44.27.020)
- 2. Alaska State Council on the Arts (§§ 44.27.040 — 44.27.060)
- 3. Alaska Historical Commission (§§ 44.27.061 — 44.27.076)

Edito 44.27.04 44.19.90 repealed (1980).

Article 1. Board and Department of Education.

Section

- 10. Board and commissioner of education
- 20. Duties of department

Sec. Educa 44, § 4

Sec. 44.27.010. Board and commissioner of education. There is at the head of the Department of Education a Board of Education. The commissioner of education is the principal executive officer of the department. (§ 11 ch 64 SLA 1959; am § 12 ch 96 SLA 1967)

Sec. Arts co perform compe perform

Am. Jur. 2d references. — 63 Am. Jur. 2d, Public Officers and Employees, § 371; 68 Am. Jur. 2d, Schools, §§ 37 — 55; 72 Am. Jur. 2d, States, Territories and Dependencies, § 62.

Sec.

Sec. 44.27.020. Duties of department. The Department of Education shall

Sec. the g appoir made associ or pre makin state- the c appoir Order

(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;

(2) administer the historical library;

(3) plan, finance and operate related school and educational activities and facilities. (§ 11 ch 64 SLA 1959; am § 77 ch 69 SLA 1970; am § 5 ch 86 SLA 1979)

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CHAPTER 60.
PRE-ELEMENTARY (EARLY
CHILDHOOD) SCHOOL

Section

- 10. Requirements
- 20. Exemption
- 30. Application for a certificate of approval
- 40. Denial of approval; hearing
- 50. Duration of approval
- 60. Display of certificate
- 70. Certificate of approval
- 80. Insurance
- 90. Records
- 100. Physical examination for children
- 110. (Repealed)
- 115. Staff
- 120. Recognition of special needs
- 130. Disaster plan
- 140. Facility inspections
- 150. Changes in major written policies, plans, programs
- 160. Nondiscrimination
- 170. Programmatic requirements of the pre-elementary schools
- 175. Transportation
- 180. Definitions

4 AAC 60.010. REQUIREMENTS. (a) Every person, institution or agency operating a school for children ages three through five years, when the school's primary function is educational, shall apply to the department for a certificate of approval.

(b) The educational component of all pre-elementary programs is under the general supervision of the department in cooperation with the Department of Health and Social Services. Those programs not approved by the Department of Education are supervised by the Department of Health and Social Services.

(c) Before admitting a child whose school expenses could be the responsibility of departments of state government, authorization of eligibility should be requested from the appropriate department by the school. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060
AS 14.35.080(4)

4 AAC 60.020. EXEMPTIONS. The following are exempt from 4 AAC 60.010:

(1) schools maintained by the United States or funded entirely with federal funds;

(2) courses of instruction on religious subjects given under the auspices of a religious organization, such as church schools, vacation Bible schools, or similar denominational programs;

(3) schools that enroll six children or less. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060

4 AAC 60.030. APPLICATION FOR A CERTIFICATE OF APPROVAL. (a) Application for a certificate of approval must be submitted on a form prescribed by the department.

(b) No pre-elementary school may represent that its program has a sponsorship, approval, characteristics, affiliation, or accreditation which it does not have, nor may any school cause a likelihood of confusion or misunderstanding as to any of these matters.

(c) Before issuing a certificate of approval, the department shall conduct an investigation of the applicant, including the proposed plan for the education and supervision of children and the mode of operation of the pre-elementary school. If the results of the investigation reveal that the primary purpose of the school is educational and that applicable regulations adopted by the department are satisfied, a regular certificate of approval shall be issued.

(d) The department may grant a conditional certificate of approval for programs with minor deficiencies correctable within a time specified on the permit, but not exceeding six months. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060

4 AAC 60.040. DENIAL OF APPROVAL; HEARING. (a) A school or program denied a certificate of approval by the department is entitled to a hearing before the state Board of Education at a regular meeting of the board if a

written appeal is received by the commissioner within 15 days of the date of denial of certification.

(b) The decision of the board on the appeal is final. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060

4 AAC 60.050. DURATION OF APPROVAL.

(a) A certificate of approval remains in effect for a period of no more than five years from date of issuance.

(b) A certificate may be revoked or suspended for failure to comply with the requirements of this chapter or other statutes and regulations governing the health, safety and welfare of students and employees.

(c) If the department has reasonable cause to believe that the holder of a certificate has failed to comply with this chapter or other applicable statutes and regulations, it may notify the holder of the basis for its belief and schedule a hearing on the matter to determine whether the certificate should be revoked or suspended. The commissioner shall appoint a hearing officer to preside over the hearing and to control its proceedings. The hearing shall be public, and all interested persons who have information relevant to the inquiry shall be permitted to be heard or to submit written statements and arguments, or both. A record shall be kept of the hearing.

(d) Following the hearing, the hearing officer shall prepare his findings and conclusions and recommend appropriate action to the commissioner. The commissioner shall review the hearing officer's recommendations and decide what, if any, action should be taken.

(e) A certificate holder whose certificate has been revoked or suspended by the commissioner may request, in writing and within 15 days of receiving notification of the commissioner's decision, that the board review that decision. A review will be made by the board or a committee of the board in the same manner as that provided in 4 AAC 60.040. The decision of the board is final. (Eff. 4/20/73,

Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060

pre-elementary school shall maintain an individual record for each pupil enrolled which must contain not less than the following:

4 AAC 60.060. DISPLAY OF CERTIFICATE.

The certificate of approval must be displayed in a prominent place in the pre-elementary school. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060

(1) child's full name, birth date, and current address;

(2) name and address of parents or legal guardians;

(3) telephone numbers and instructions how the parents may be reached during school hours;

(4) names and addresses of persons authorized to take the child from school;

(5) a record indicating the immunization status of the child;

(6) a Cumulative Health Record Form. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060**4 AAC 60.070. CERTIFICATE OF APPROVAL.** The certificate of approval must include

(1) name of pre-elementary school;

(2) address of pre-elementary school;

(3) maximum allowable number of children;

(4) effective dates of certificate;

(5) ages of children to be enrolled;

(6) minimum number of staff members required to be in attendance while children are present. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060**4 AAC 60.100. PHYSICAL EXAMINATION FOR CHILDREN.** (a) Not more than three months before first entering school, each child must have a tuberculosis skin test which meets the requirements of 7 AAC 27.213.

(b) Before first entering school, each child must have received the immunizations required by 4 AAC 06.055. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62; am 8/17/78, Reg. 67; am 9/24/82, Reg. 83)

Authority: AS 14.07.020(7) and (8)
AS 14.07.060
AS 14.30.070**4 AAC 60.080. INSURANCE.** (a) Each nonpublic, pre-elementary school must have bodily injury liability insurance in an amount not less than \$100,000 per child, \$300,000 per accident, with a company authorized to do business in the State of Alaska. Policies must contain the following endorsement:

"In the event of cancellation of this policy, the company agrees to give 30 days' advance notice to the Department of Education, Pouch F, Juneau, Alaska 99811."

(b) If the insurance required under (a) of this section is allowed to lapse more than once in a 12-month period, the second policy lapse is grounds for termination of approval. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060**4 AAC 60.110. PHYSICAL EXAMINATIONS FOR EMPLOYEES AND VOLUNTEERS.** Repealed 5/20/77.**4 AAC 60.115. STAFF.** (a) All staff members must have a physical examination annually and not more than three months before initial employment in the pre-elementary school. This**4 AAC 60.090. RECORDS.** The

physical examination must include proof of negative Tine test. It is the responsibility of the operator to maintain a personnel file for each employee in which the results of the current physical examination are kept. This file is subject to inspection by the department.

(b) All volunteers who work in the classroom or who provide direct services to children must present to the operator proof of a negative Tine test taken not more than three months before initial service. This test must be repeated annually.

(c) Schools subject to the provisions of this chapter shall comply with all applicable statutes and regulations concerning labor and employment practices. (Eff. 5/20/77, Reg. 62)
Authority: AS 14.07.020(7) and (8)
AS 14.07.060

4 AAC 60.127. RECOGNITION OF SPECIAL NEEDS. At the age of three years, an exceptional child may receive special assistance as a part of the local school district's annual plan of services for special education. Any pre-elementary school which provides services for an exceptional child and receives state funds for providing those services must adhere to state guidelines for special education programs. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060
AS 14.30.180

4 AAC 60.130. DISASTER PLAN. Each pre-elementary school shall develop a disaster plan which must include provisions for accountability for each child in the school until he is released to an appropriate authority. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(7) and (8)
AS 14.07.060

4 AAC 60.140. FACILITY INSPECTIONS. (a) Each pre-elementary school shall request an inspection by public safety and health agencies and shall conform to standards established by those agencies.

(b) Copies of documents indicating satisfactory compliance with health and safety standards must be filed with the department before the issuance of a certificate of approval.

(Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(7) and (8)
AS 14.07.060

4 AAC 60.150. CHANGES IN MAJOR WRITTEN POLICIES, PLANS, PROGRAMS. Major changes in written policies, plans, programs and other information included in the initial application must be transmitted to the department within 30 days following implementation of the change. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060

4 AAC 60.160. NONDISCRIMINATION. No pre-elementary school will be approved unless it adopts a policy of nondiscrimination in respect to race, sex, creed, color or religion with the following exceptions:

(1) a pre-elementary school established for an identified group (e.g., physical-mental handicaps) may serve that group only but otherwise may not discriminate;

(2) a religious group may elect to serve children that adhere to its religious beliefs but otherwise may not discriminate. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060

4 AAC 60.170. PROGRAMMATIC REQUIREMENTS OF THE PRE-ELEMENTARY SCHOOLS. (a) The pre-elementary school shall provide the following information, in writing, to the department: the philosophy of education; the goals and objectives of the school; the program model and teaching techniques used in achieving the stated goals and objectives; daily educational activities schedule including provisions for individual activities, small group activities and large group activities; the number and ages of the children to be served along with the number of staff members working with the children; provisions for parental involvement; a copy of all public advertisements regarding the school; a copy of the personnel and administrative rules of the school; and a copy of all administrative forms used by the school.

(b) A pre-elementary school must have

sufficient staff to provide for each child's physical care and to offer individual attention to children as it may be needed as well as time to interact with children for the benefit of their conceptual and language growth. The number of staff and their utilization should reflect programmatic requirements, differences in the needs of the children served and should permit flexible groupings.

(c) There must be at least two staff members, one of whom may be a teacher-aide, present in each building. They must be stationed in sufficient proximity to be of aid in emergency situations.

(d) The operator shall provide a written training plan for each staff member who serves in the capacity of teacher, teacher-aide or assistant teacher. This plan must include provisions for preservice and inservice training and must indicate frequency as well as content. All such training is subject to the approval of the department.

(e) The department shall investigate to determine whether the programmatic objectives of the school are being met. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060

4 AAC 60.175. TRANSPORTATION. An adult must be designated to accompany the driver and provide for pupil safety when more than six pupils are transported in a vehicle. (Eff. 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060

4 AAC 60.180. DEFINITIONS. Unless the context indicates otherwise, in this chapter

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

(2) "board" means the state Board of Education;

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

(4) "pre-elementary school" means a school for children ages three through five years whose primary function is educational;

(5) "certificate of approval" means a regular certificate issued to an operator of a pre-elementary school who has met the minimum requirements of this chapter;

(6) "operator" means the person legally responsible for the pre-elementary school;

(7) repealed (Eff. 5/20/77, Reg. 62);

(8) "staff member" means anyone who provides direct services to children in the classroom and may be any of the following:

(A) a person 19 years or over who is salaried;

(B) classroom volunteers who are at least 19 years of age;

(C) student aides who are enrolled in a training program who are at least 16 years of age;

(9) repealed (Eff. 5/20/77, Reg. 62). (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)
AS 14.07.060

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HB - 357
 Title: ...regulation of religious schools
 Sponsor: Fritz
 Requestor: House HESS

II. FISCAL DETAIL

Agency Affected: Education
 Program Category Affected: Elem. & Sec.
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Steve Hole Phone: 465-2865
 Division: Management, Law, & Finance // Date: 4/18/83
 Approved by Commissioner Marshall Lind Date: 4/18/83
 Department: Education

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

3/8/83



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y. State Capitol
Juneau, Alaska 99811
(907) 465-3991

May 13, 1983

MEMORANDUM

TO: Representative Sam Pestinger

FROM: Leslie Longenbaugh *LL*
Research Staff

RE: Other States' Regulation of Religious Schools
Research Request 83-159

Ed Essa of your staff asked that we provide information about states that regulate religious and other nonpublic schools differently. My preliminary work, provided to you on May 4, revealed five states that exempt religious schools from some state regulation to which other nonpublic schools are subject. Upon further investigation, I found significant differences in regulation in only three states: Maryland, North Carolina and Tennessee. Below is a brief description of the statutory distinctions made by each state; I have attached copies of the pertinent state statutes.

Maryland

Maryland requires that private "noncollegiate" schools obtain a state certificate of approval before they may operate in the state. The issuance of such a certificate of approval is contingent upon the state board of education's finding that the "facilities, conditions of entrance and scholarship, and educational qualifications and standards are adequate and appropriate" for the type of school.¹

Specifically exempted from the requirement of a certificate of approval are all institutions "operated by a bona fide church organization..."² Schools that come under this exemption may not receive any state funds other than funds for the state food service program.

All private noncollegiate schools in Maryland, including the religious schools that are exempt from the certificate of approval, must make annual reports of their enrollment and courses of study.³ In addition,

¹ Annotated Code of Maryland, Education § 2-206 (e)(2).

² ACN § 2-206 (3)(4).

³ ACN § 2-205.

they must conform to a state law that requires private schools that are ending operation to furnish to the state the academic records of all past and present students.

North Carolina

North Carolina in 1979 enacted a statute which has served as a compromise between the competing interests of religious schools and states.⁴ For the purposes of state regulation, the law creates three types of legal nonpublic schools: 1) religious schools, defined as "private church schools or schools of religious charter"; 2) "qualified nonpublic schools" -- these institutions are either accredited by the state or an association or receive no state funds; and 3) "proprietary schools," or nonpublic schools that are operated for profit.

Schools in the first and second classifications above (religious institutions and other nonpublic schools) share the following requirements:

- a) notice to the state of the intent to begin or cease operation;
- b) maintenance of annual attendance and disease immunization records for all students (there is no requirement that these records be submitted to the state);
- c) operation on a regular schedule during at least nine months of the year;
- d) subjection to reasonable fire, health and safety inspections as required by law;
- e) administration of nationally standardized tests for all students in the first, second, third, sixth and ninth grades;
- f) administration of nationally standardized tests for all students in the eleventh grade and establishment of minimum standards for achievement on the test before graduation.

In addition, schools of these two types may choose to participate in any state-operated or -sponsored program which is available to other nonpublic schools. The statute adds that no other state laws, except health, fire and safety laws, are applicable to these schools.

Apparently, North Carolina is one of only three states that require standardized testing for students of religious schools (New York and

⁴ General Statutes of North Carolina, § 115C-547 through § 115C-554.

South Dakota are the other states). In North Carolina, the chief administrator of the religious school may choose the test, rather than having the state select the tests to be given. The tests need cover only the basic secular skills -- grammar, reading, spelling and mathematics. Records of the test scores must be available for state inspection for one year following the test.

Nonpublic schools that are operated for profit must obtain a license from the state annually. The state board of education is charged with promulgating and enforcing regulations and standards governing approval and licensure. By law, the reports solicited must include detailed information regarding curricula, costs, and instructional space. In addition, the schools must post a bond of \$1,000.⁵

Another difference in the requirements for licensed and exempt nonpublic schools in North Carolina is the certification of their staff. While North Carolina is one of the few states that require nonpublic-school teachers to be certified, teachers in religious schools are exempt from this provision.

Tennessee

The Tennessee Department of Education, by regulation, requires that all nonpublic schools report the name, age and address of all students to the local public school superintendent for the purposes of ensuring compliance with attendance laws.⁶ Otherwise, state law requires only that the department of education inspect, approve and classify those primary, secondary and pre-elementary nonpublic schools that request such services. The approval is to be according to the standards that are used for the state's public schools.⁷

In 1976, the Tennessee legislature enacted legislation which prohibits the state and local boards of education from regulating the selection of faculty, textbooks or curricula of "church-related schools." The law requires that these schools meet the standards of accreditation of at least one of four nonpublic school associations. The law does require that the terms of church-related schools be as long as the public schools'.⁸

⁵ GSNC §115C-570.

⁶ Donald Wood, Chief of Management Services, Tennessee Department of Education, Nashville; telephone: 615/741-2731.

⁷ Tennessee Code Annotated, 49-105 § 19.

⁸ TCA 49-5201.

Representative Pestinger

May 13, 1983

Page 4

The statute adds that children who attend church-related schools may transfer into the state's public school system; however, the public schools may test such students and place them at a grade level that is indicated by the results of the test.

Like other nonpublic schools in Tennessee, church-related schools may apply for state approval, and many do. Of approximately 440 nonpublic schools in the state, roughly 160, both religious and secular, have received state approval.⁹

Case Law

Mr. Essa mentioned an interest in the case law about the regulation of religious nonpublic schools. I have enclosed a copy of a law review article written about North Carolina's regulation of religious schools; this article contains a concise overview of the findings of the United States Supreme Court and state courts of last resort.

* * *

If you have any questions or further needs for research, please call on us.

LL

Attachments: Annotated Code of Maryland, Education, § 2-205, § 2-206,
§ 2-304
General Statutes of North Carolina, Articles 39 and 40
Tennessee Code Annotated, Chapter 2 and § 49-105
J. Eric Evenson II, "State Regulation of Private Religious Schools in North Carolina -- A Model Approach,"
Wake Forest Law Review, Vol. 16 1980, pages 405 to 437

⁹ Donald Wood, Tennessee Department of Education.

CHERI C. JACOBUS
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1348 CRESCENT AVENUE
ANCHORAGE, ALASKA 99504

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 educational 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

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, 258 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.").

church operated schools clearly come within the First Amendment free-exercise clause, their activities are constitutionally 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

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.

a private school for profit and a school operated by a church are entirely different.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 18, 1983

SUBJECT: Regulation of religious schools
(HB 357)

TO: Representative Milo Fritz

FROM: Keith B. Levy *KBL*
Legislative Counsel

RECEIVED
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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
Page 3
April 18, 1983

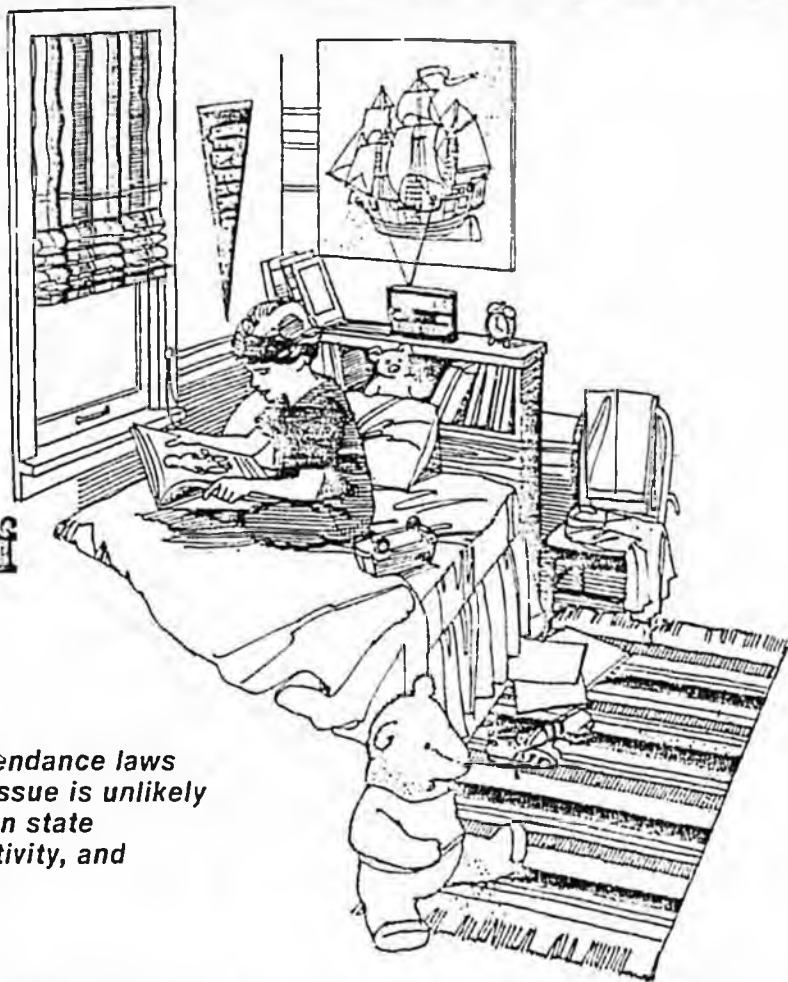
federal funding in a different manner than a private, nonprofit school which does not receive federal funding and is operated by a church or other religious organization. The only difference between the two classes of schools is that one is run by a religious group and the other is not. To justify such 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.¹²

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 non-theistic, 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 F. Bennett and Edwin J. Delattre, "Moral Education in the Schools," *The Public Interest*, Winter 1978, pp. 81-98; and Andrew Gledhill, "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 1970, 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 B in Patricia Lines, "Private Education Alternatives and State Regulation," Education Commission of the States, Pub. No. L.L.C. 82-3, March 1982.

12. Tennessee Statutes Annotated, Sec. 49, 5201-5204 (1970).

13. North Carolina General Statutes, Sec. 155C-547 *et seq.* (Cum. Supp. 1981); Sec. 155C-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. 208 U.S. 510 (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.

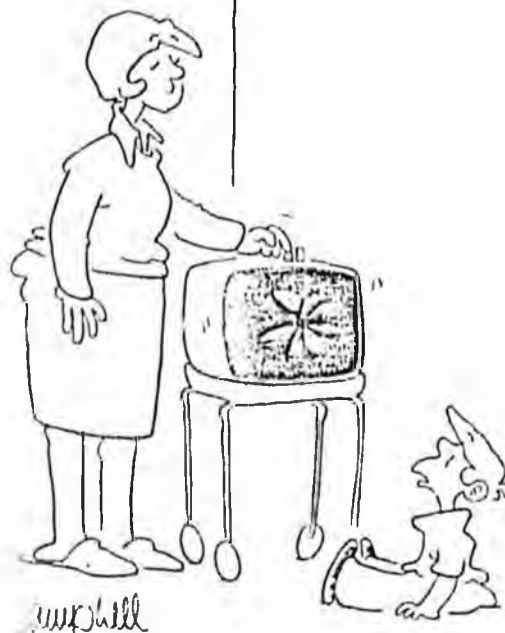
25. See, for example, *Nagle v. Olin*, 64 Ohio St.2d 341, 415 N.E.2d 279 (1980), which dealt with a non-Amish parent sending a child to an unapproved Amish school; and *State v. Nobel*, Nos. S 791-0114-A and S 791-0115-A (Mich. Dist. Ct., Allegan County, 9 January 1980), which dealt with a mother who 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 (*Pretymian 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 Longenbaugh, Research Staff
May 4, 1983

I. 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
- 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."

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