

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8072

9545 SENATE HEALTH EDUCATION & SOCIAL SERVICES 182

HB

158

SENATE COMMITTEE REPORT

DATE: 4/28/97

FURTHER:

DATE TURNED IN TO OFFICE: 5/7/97

HESS Committee considered HOUSE BILL NO. 158

"An Act relating to attendance at a public school on a part-time basis."

and recommends:

- be replaced with _____ CS _____ ()
- adopt previous _____ CS _____ ()
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical change
 - new: SCR^o _____

SIGNING DQ PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>[Signature]</i>			
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
CHAIR:		CHAIR: <i>[Signature]</i>	✓		

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
DOE	3/10/97	✓	—

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
→			

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

No. 1
 Bill Version: HB 158
 (H) Publish Date: 3/26/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____
 Title: An act relating to attendance at a public school on a part-time basis.
 Sponsor: Representative Dvson
 Requester: HESS

Department Affected: Education
 BRU: K-12 Support
 Component: Foundation Program

COMPONENT SERIAL NO. _____ 141

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY97) impact: -0-

ANALYSIS: (Attach a separate page if necessary.) Section 1 requires a local school board to allow a child who is enrolled at a private school, is a correspondence student or is being home schooled, to enroll as a part-time student. Currently AAC 05.035, allows a school district to enroll a part-time student. School districts that permit part-time enrollment shall adopt a policy how the district will comply with certain requirements and process a request for part-time enrollment. Districts may enroll part-time students if there is space available, if requested by the student's parent, if the student has met the prerequisites for the course and if the enrollment does not result in an expenditure of public money for the direct benefit of a private educational institution. 4 AAC 09.050 establishes the methodology for counting part-time students for foundation funding.

Prepared by: Eddy Jeans, School Finance Manager
 Division: Education Support Services
 Approved by Commissioner: Shirley Holloway, Ph. D., Commissioner
 Agency: Education

Phone: 465-8679
 Date: 3-10-97
 Date: 3-10-97

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COMMITTEE COPY

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REPRESENTATIVE FRED DYSON

HB 158 Sponsor Statement (revised)

"An Act relating to attendance at a public school on a part-time basis."

HB 158 prohibits public school districts from discriminating against part-time Alaskan students.

The Alaska State Constitution, Article VII, Section 1 (Public Education) states, "The legislature shall by general law establish and maintain a system of public schools open to all children of the State...." The Alaska Administrative Code makes provisions and establishes a funding mechanism for part-time students. According to 4 AAC 09.040, "a student enrolled in one course in a semester equals 0.25 full-time equivalent" of the foundation formula. This graduated scale gives a school full credit for a student who attends four courses daily.

When the Attorney General's office prepared the current state statutes for part-time students and the foundation formula reimbursement for part-time students, it was anticipated that every school would fulfill the constitutional mandate and not discriminate against part-time students.

On April 14th, the State Board of Education unanimously endorsed HB158. They strongly encourage public schools to provide educational service to all local qualified students including home, correspondence, and private school students.

Many public school districts such as Sitka, Mat-Su, and Fairbanks work cooperatively with all non-public school students. Their attitudes and actions allow many options for parents and provide for a quality educational experience. They report virtually no problems from this cooperation. For students who have been expelled from the public schools and are being home schooled in the interim, the part-time option will allow the student to gradually make the transition back into the public school system.

School districts have found part-time students to be academic and social assets to their schools. In working cooperatively with private and home school students, public educators take a critical step toward providing an important resource to "all children of the State." The participation of part-time students in public schools has helped to diminish the apprehension of many parents about the public school system.

As far as we know, every school district in the state accepts part-time students from the home, correspondence and private school communities except the Anchorage School District (ASD). ASD reasons that providing an educational benefit to an individual child might accrue as a benefit, somehow, to some private school and thus raise constitutional concerns. The Legislative Legal staff, as well as the Attorney General's office, maintain that there is no constitutional issue.

Alaska State Legislature

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Representative_Fred_Dyson
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LEGAL SERVICES

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

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


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

MEMORANDUM

March 26, 1997

SUBJECT: Part-time attendance at a public school - (HB 158)

TO: Representative Fred Dyson
Attn: Lisa

FROM: Michael F. Ford 
Legislative Counsel

*Leg. Legal
Response*

You have asked for my comments on the concerns raised by the Anchorage School district regarding HB 158. I will set out each point raised and my response.

1. HB 158 will decrease enrollment and funding for public schools.

This point seems unlikely given the existing funding mechanism for part-time students under regulations. It also seems contradicted by testimony by the district that it is an increase in enrollment that was the district's primary concern. Finally, if this is a real problem why haven't we heard about it from those districts that do admit part-time students?

2. HB 158 violates the constitutional prohibition against direct aid to private or religious schools.

While I will concede that HB 158 probably constitutes an indirect benefit to private schools, I firmly believe that it is not a direct benefit. This conclusion is supported by the interpretation of the Alaska Supreme Court in Sheldon Jackson College v. State, 599 P.2d 127 (Alaska 1979). The critical area of inquiry according to the court was whether the benefit in question was available without regard to status or affiliation. For example, police and fire protection may provide direct benefits to a private school, but because such benefits are provided without regard to the recipient, they do not violate the constitutional prohibition against direct benefits. Conversely, a benefit flowing only to private schools does not reflect the neutrality required under the Alaska Constitution. Assuming that HB 158 becomes law, it would benefit students who seek part-time enrollment, without regard to the status or affiliation of the recipient. This is another example of indirect aid to private schools that meets the constitutional requirement of neutrality. Finally, it is also instructive to consider another case, Matthews v. Quinton, 362 P.2d 932 (Alaska 1961). In this decision the court held that a statute enabling private school children to ride public school buses was a violation of the direct benefit provision of the Alaska Constitution. However, in Sheldon Jackson, the

Representative Fred Dyson

March 26, 1997

Page 2

court said "we do not rely on Matthews in reaching today's decision, and thus have no occasion to overrule or reaffirm it. A substantial question, however, can be raised as to its continuing vitality in light of the analysis which we employ in the present opinion." Sheldon Jackson, at 130. This, I believe, signals the court's view that benefits provided without regard to status or affiliation, such as contemplated in HB 158, do not violate the Alaska Constitution.

3. HB 158 will cause problems regarding the compulsory education law (AS 14.30.010).

I cannot see how HB 158 will add or remove any concerns over enforcement of the compulsory attendance law. HB 158 specifies that part-time attendance does not constitute attendance for purposes of AS 14.30.010(a). In short, a student could not meet the requirements of AS 14.30.010 by part-time enrollment only.

4. HB 158 does not distinguish between primary and secondary students.

Again, I cannot see how this creates a problem. I would hope that public schools are not simply "day care" services as suggested by the Anchorage school district.

5. Does HB 158 allow a district to reject a part-time enrollee because a class is full?

Under HB 158 (sec. 14.03.095(b)(1)), enrollment can be denied if the enrollment would be denied for a full-time student. Again, the goal is to treat all students alike or in a neutral manner. Therefore a part-time student can be denied enrollment if a class is full, assuming a full-time student would also be denied enrollment.

6. Does HB 158 apply to extracurricular activities?

Arguably, HB 158 could be interpreted to require the same policy for academic classes as for extracurricular activities. This issue can be resolved by specifically excluding or including extracurricular events. Again, if HB 158 were applicable to extracurricular activities, part-time students would receive the same treatment as full-time students.

7. Does HB 158 require the district to allow part-time enrollment at any school in the district?

HB 158 allows the district to apply the same enrollment criteria to part-time enrollment as for full-time enrollment. Therefore, a part-time student could not enroll at any school if the enrollment is also denied to a full-time student.

Representative Fred Dyson
March 26, 1997
Page 3

8. Does HB 158 require the district to provide transportation to part-time students.

If the student who attends part-time is on a route that provides transportation to a full-time student, the part-time student is entitled to transportation. Again, HB 158 requires similar treatment, not disparate treatment.

9. Does HB 158 create additional liability for the district?

HB 158 does not increase or decrease liability. A part-time student is simply a student, with the same issues regarding liability as any other student.

10. HB 158 will require the district to investigate why a student wants to enroll part-time.

A district is not required to police its enrollment, if enrollment is available to all students regardless of whether enrollment is full or part-time. Complications do arise when distinctions are made on the basis of enrollment outside of the district. This is precisely the problem HB 158 would eliminate.

In conclusion, none of the issues raised by the district rise to the level of constitutional defects. There are certainly many policy questions, but these are questions that are within the power of the legislature to resolve.

If you have further questions please contact me.

MFF:jdr
97-221.jdr

STATE OF ALASKA

DEPARTMENT OF EDUCATION
OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

GOLDBELT PLACE
801 WEST 10TH STREET, SUITE 200
JUNEAU, ALASKA 99801-1894

(907) 465-2800
FAX (907) 465-4156

April 9, 1997

APR 10 1997

Representative Fred Dyson
Alaska State Capitol, Room 428
Juneau, AK 99811-1182

Dear Representative Dyson:

During its April 7, 1997 meeting, the Alaska State Board of Education, by unanimous vote, voted to support HB 158, an act relating to attendance at a public school on a part-time basis.

On behalf of the State Board of Education, I would like to thank you for attending the public comment portion of the State Board meeting on Monday, and speaking about HB 158.

Sincerely,



Shirley J. Holloway, Ph.D.
Commissioner

cc: State Board of Education

ALASKA
DEPARTMENT OF EDUCATION
OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

GOLDBELT PLACE
801 WEST 10TH STREET, SUITE 200
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(907) 465-2800
FAX: (907) 465-4156

April 14, 1997

APR 16 1997

The Honorable Fred Dyson
Alaska State Legislature
State Capitol, Room 428
Juneau, AK 99801

Dear Representative Dyson:

The Alaska State Board of Education, by unanimous vote at its April 7, 1997 meeting, voted to support HB 158, an act relating to attendance at a public school on a part-time basis.

Please feel free to contact my office should you require information for your deliberation of this bill.

Sincerely,



Shirley J. Holloway, Ph.D.
Commissioner

cc: Superintendents



Lawrence A. Wiget, Ed.D.
Director, Government Relations/Legislative Liaison
Anchorage School District
4600 Debarr Road
Anchorage, Alaska 99519-6614
(W) 907 269-2255 (FAX) 907 269-2340

TO: REPRESENTATIVE CON BUNDE
SUBJECT: HB 158: SUMMARY OF ASD CONCERNS
DATE: MARCH 24, 1997

6 pages including cover sheet

DEAR REPRESENTATIVE BUNDE:

PLEASE DISTRIBUTE THE ATTACHED LETTER SUMMARIZING ASD CONCERNS REGARDING HB 158 TO MEMBERS OF THE HESS COMMITTEE.

PLEASE FEEL FREE TO CALL IF YOU HAVE ANY QUESTIONS.

THANK YOU!

ASD
Arguments



Anchorage School District

Anchorage, Alaska 99519-6614

Bob Christal, Superintendent
(Phone) 907 269-2113 (FAX) 907 269-2340

Re: HB 158

Dear Chairman Bunde:

I am writing to summarize Anchorage School District concerns regarding HB 158. The brief time allotted for public testimony plus confusion regarding constitutional and other issues has made it difficult for the District to clearly set forth the basis for its opposition to this bill which would compel Anchorage, as well as all other public school districts, to admit as part-time students individuals who primarily are enrolled at private schools or through correspondence or home school.

Initially, we wish to make it absolutely clear that ASD schools are open to every school aged child residing in Anchorage. The District eagerly looks forward to educating each such child. We recognize that for a variety of reasons, some students and parents prefer the educational opportunities provided through private schools or through home or correspondence schooling. By providing quality programs, the ASD hopes to attract and retain an increasing number of students in our public schools.

As pertains to the situation which exists in Anchorage, HB 158 will not accomplish this purpose. Rather, HB 158 assuredly will decrease enrollment in and funding for public schools. The prediction of decreased enrollment and funding is based on our actual experience--not speculation.

As some of you are aware, the District was sued several years ago by students and parents who sought to compel the District to permit private and home school students to participate on District athletic teams. Blomfield v. Anchorage School District, Civil Action No. 3AN-93-2740 Civil. The Superior court issued a lengthy opinion affirming the District acted legally when it did not admit students who attended private and home schools.

In addition to confirming the legality and constitutionality of the District's policy not to accept part-time or otherwise unenrolled students, the Blomfield case also provided a significant insight into the actual impact of admitting part-time students. The named plaintiffs were in fact students who were enrolled as full time ASD students. However, if permitted, as they sought in the law suit, to participate in programs not offered outside the public school system, they fully intended to leave the public schools. In other words, the only reason these students remained enrolled in the ASD as full-time students was to participate in programs which were very important to them which programs private

and home schools did not offer.

If HB 158 is enacted into law, the District will lose many students who are currently enrolled full time. Such students will become part-time students, participating only in courses or programs which are not available through private or home schools. As a result, the ASD will lose funding. At the same time, we will experience increased demand for those offerings (such as science courses, computer and technological courses, vocational education courses, etc.) which are the most expensive to operate and which require the smallest class size.

Ultimately, then, HB 158 will lead to a decrease in the overall quality of our program by leading to increased class sizes and less funding. Thus while the motivation behind HB 158--to increase educational opportunities for private and home school students--is laudable, in fact any such increase in opportunities for private school students will come at the expense of opportunities available to fully enrolled students.

Moreover, while jeopardizing the quality of programs the ASD offers, HB 158 also raises a number of serious legal and administrative problems. The costs associated with addressing these problems will further dilute funds available to provide educational programs.

Legally, we have been advised by our attorney that HB 158 will almost certainly be found to be unconstitutional since it would provide a direct benefit to private educational institutions (see Sheldon Jackson University v. State, ___ P.2d ___ (Alaska 1979)) and it would create significant entanglements between the public school system and private schools.

We realize the legislative legal counsel has suggested constitutional problems would not be raised. Assuming for the sake of argument that the constitutional issues are murky, the ASD will assuredly be enmeshed in litigation if HB 158 is enacted. We will be sued by the ACLU or similar interest if private students are admitted, or we will be sued by private students or their parents if we do not admit such students. Since the plaintiffs in either type of suit will certainly be viewed as "public interest litigants", the District will not be able to recover whatever costs it is required to expend if it wins such litigation, while it will have to use public funds to pay the costs and attorneys fees of the other side as well as its own costs if the District loses. Unless the constitutional issue has been clearly resolved, the ASD should not be compelled to risk this additional expenditure of funds.

Beyond the question of the constitutionality of HB 158, there are a host of other legal and associated administrative issues

which this bill as drafted raises.¹ To summarize, let me enumerate just a few of these issues:

--It is unclear how HB 158 would interface with the state compulsory education law (AS 14.30.010). First it will be both difficult and expensive (and require significant entanglement) for the ASD to verify whether part-time students meet compulsory education requirements. Moreover, AS 14.30.010(b) exempts from the compulsory education law students who attend "comparable" programs at private schools. If a student must seek out ASD offerings, a question would arise whether the private school program is "comparable."

--As drafted, HB 158 appears not to differentiate between primary and secondary students. Assuming it applies to elementary students, would application for part-time enrollment be limited to defined programs such as band, or could a parent demand part-time enrollment for a certain number of hours each day (say from 9 to 11 each morning), thus obtaining what could amount to little more than free part time day care?

--What leeway will a district have to reject a part-time applicant because particular courses or programs are already full? Would the District have to add additional sections to meet the demand created by part-time applicants? Would the District have an obligation to notify private schools or unenrolled students about registration each semester so that such students would have the same opportunity to apply for limited enrollment courses? If part-time students fill limited enrollment offerings, how would the District deal with full-time students who could not meet graduation or college admission requirements because desired courses were no

¹An amendment which the Committee considered at its meeting last week would limit the bill's application to home school and correspondence students. If adopted, this amendment would appear to lessen the constitutional problem created by Article VII, Section 1 of the Alaska Constitution which prohibits payment of any money from public funds "for the direct benefit of any religious or other private educational institution." (emphasis added) However, we envision a possible law suit by students attending private educational institutions questioning whether such a law would violate their rights to equal protection. Moreover, even if the constitutional problem is avoided, the other practical and legal concerns which we have would exist without regard to whether part-time students come from private institutions or from home and correspondence schools.

longer available? The course registration process is already complex and time consuming. Adding part-time students into the mix can only complicate this process and make it increasingly difficult for the District to meet the demands and expectations of our students.

--As drafted, is HB 158 intended to apply only to academic offerings, or does it also apply to participation on athletic teams and other extra-curricular activities? In other words, is HB 158 intended to over rule the Blenfield decision by allowing a private school or home school student to demand the right to participate on public school teams? Alternatively, could a part-time student who took one course only at a public school thereby claim enrollment in the school sufficient to allow participation on the school athletic teams?

--Must a part-time applicant seek out courses only at his "home" school, or could the student enroll at any school in the District? For instance, could a child living near West High School demand the right to take Japanese at Service High School? Or could that student enroll in Japanese at Service and Chemistry at West? Could a part-time student demand admission to a course at an authorized charter school or at one of the District's optional schools such as Steller or Polaris where full-time students gain admission only through lottery?

--Does the public school district have any responsibility under HB 158 to provide transportation to part-time students?

--What liability will the public school have in the event that a part-time student is injured or causes injury to others on his/her way to or from the public school?

--To avoid prohibit "direct benefits" to private educational institutions, will the ASD be required to investigate why each part-time student seeks to enroll? In other words, if a particular private school followed a practice of directing its students to take chemistry at ASD schools so the private school did not have to incur the cost of operating a chemistry program, this would certainly be a "direct benefit" to that school. However, the ASD would not necessarily know this was occurring unless it investigated each part time enrollment application. Obviously, this type of obligation would be expensive and time consuming and would involve a high level of entanglement between the ASD and the private schools.

The potential for legal claims and the additional

administrative costs associated with each of these issues is substantial. Addressing these issues will unavoidably siphon off the District's limited resources from its existing programs.

In conclusion, in those districts where admission of part-time students is identified as a benefit to both those students and to the public schools, it may be worth assuming the risk of a constitutional or legal challenge. Existing Department of Education regulations allow each district to determine whether the benefit to be gained is worth the administrative burden and risk of legal challenge. In the situation which exists in Anchorage with numerous non-public school alternatives, mandating enrollment of part-time students would weaken the public school system and expose the District to a variety of legal challenges and administrative headaches.

Under these circumstances, the ASD strongly believes enactment of HB 158 would constitute bad (and likely illegal) public policy, despite the laudable concerns which have motivated this proposed legislation. While perhaps unrealistic at the current time, the more sensible way to address the concerns which have motivated this legislation would be to fund public education more fully so the ASD could reduce class sizes and provide other improvements which would make full-time public school enrollment a desirable alternative to those who now choose to obtain their education outside of the public school system..

Thank you for considering our concerns. Representatives of the District remain available to provide you with such information as may be of assistance in your consideration of this important matter.

Sincerely,


Bob Christal

cc House HESS Committee Members

Voice of The Times

The Anchorage Times

Publisher: BILL J. ALLEN

"Believing in Alaskans, putting Alaska first!"

Editors: DENNIS FRADLEY, PAUL JENKINS, WILLIAM J. TOBIN

The Anchorage Times Commentary in this segment of the Anchorage Daily News does not represent the views of the Daily News. It is written and published under an agreement with former owners of The Times, in the interests of preserving a diversity of viewpoints in the community.

Discrimination

UNDER REGULATIONS in Alaska's Administrative Code, public schools can discriminate against certain students because of what some believe to be classroom politics.

The schools have the authority to bar admission to students who wish to attend class part-time. The Anchorage School District is among those which deny part-time enrollment.

Students requesting part-time admission generally attend a private school or are being schooled at home. They usually want to take certain specialized classes at public school, in courses not otherwise available to them.

Denying these students part-time access is an inequity for their families — who already pay their fair share of local property taxes to support the public school system, in addition to financing a private education or making the sacrifices required to teach classes at home.

Many of these parents suspect that the closed-door policy is political, advocated by the teachers' union as a way to punish families providing their children an education alternative.

Freshman state Rep. Fred Dyson, R-Eagle River, wants to end the discrimination. He is sponsoring legislation, House Bill 158, which would require public schools to accept part-time students. "Property taxes used toward education costs are not selective among tax-paying individuals — neither should the schools," he said.

We concur.

High court studies lifting limit on aid to church schools

By Tony Mauro
USA TODAY

Supreme Court justices seemed worried Tuesday about moving too quickly to reverse their prior rulings and allow public school teachers to give remedial instruction inside parochial schools.

Lawyers for the Clinton administration and New York City asked the high court to reverse a 1985 decision that said federally funded Title I instruction in math and reading could not be given inside religious schools, to avoid "excessive entanglement" of church and state.

The Title I law, passed in 1965, requires federally funded remedial help for under-achieving students from low-income families, no matter what school they attend.

The effect of the 1985 decision has been to force qualified parochial students from low-income areas to leave their schools and go to vans parked at curbside for tutoring by public school teachers.

New York City, which was involved in the earlier case, says it has spent \$100 million on the vans and other measures to comply with the ruling — money that could have been spent helping more children. "New York City children who are poor are not getting what they need," the state's top lawyer, Paul Crotty, told the court.

Five justices have said in recent years that they would like to reconsider the 1985 decision, giving hope to advocates of school voucher programs that would give public funds to parents to send their children to parochial schools.

In past rulings, the court has also moved toward greater ac-

commodation of religious practices in public life.

But by the end of the hour-long argument Tuesday, the court seemed headed toward a narrow opinion that would lend little support to those who advocate more public aid to parochial schools.

"They seemed betwixt and between," said Elliot Mincberg, lawyer for the civil liberties organization People for the American Way, who watched the arguments. "Nobody was talking about vouchers today."

Several justices indicated they were reluctant to allow parties involved in past Supreme Court decisions to ask the court to reverse itself later. If the court reverses itself here, Justice David Souter said, "I don't see why a losing litigant couldn't come in anytime and say, 'I'd like another shot.'"

The court has reversed past rulings, but always in the context of a case posing new facts, rather than through a reconsideration of the original case as New York wants it to do now.

New York lawyer Stanley Geller, who has been fighting against public aid to parochial schools for 50 years, urged the court to preserve its earlier decision. He said the New York case was an inappropriate vehicle for reversal. The court instead could wait for cases from Louisiana and Minnesota that pose the same issue and are working their way through the courts, he said.

Geller also said parochial school students could get the instruction at much lower cost, by forgoing the vans and traveling to nearby public schools.

A decision in the case could come by July.

► Drug-testing ruling, 1A

USA today 4-16-97

IDITAROD AREA SCHOOL DISTRICT
Box 90
McGrath, Alaska 99627

F A X C O V E R S H E E T

DISTRICT
POLICIES

DATE: February 24, 1997 TIME: 11:46 AM
TO: Jan Newton - Room 323 FAX: 586-8315
FROM: Isabelle Harrington *Isabelle* PHONE: 907-524-3599 ext. 224
Business Manager FAX: 907-524-3217

RE: PART TIME STUDENTS

Number of pages including cover sheet: 1

Message

Regarding your question on how we treat part-time students:

We have followed guidelines as outlined in the old DOE "Pupil Accounting" manual for correspondence students (page 58). Those guidelines are as follows:

"A student who is enrolled for two or more Carnegie units for a semester or four or more units for the year is to be counted as full-time. A student enrolled for less than two units for the semester or less than four for the year, will be divided by two or four, respectively and counted as a fractional full-time equivalency (FTE). When calculating the individual student membership for a secondary correspondence student, the number of days in members must be multiplied by the fraction obtained above."

Even though this applies only to secondary students, we have used these guidelines for all students even elementary students who may be on a home-schooled christian school correspondence for part of their day.

What this does for funding purposes is a student would then be pro-rated for the foundation count. A child who only is enrolled for two courses would then be counted as a half-time student and the funds given would be less than a full-time student.

I hope this helps. Let me know if you need any additional information.

*Seniors carrying min.
Correspondence*



JUNEAU SCHOOL DISTRICT
CITY AND BOROUGH OF JUNEAU

10014 CRAZY HORSE DRIVE • JUNEAU, ALASKA 99801-8529 • (907) 463-1700

x214
4...-...-...
11/11/97

FACSIMILE TRANSMISSION

Date: 2/24/97 Telefax #: (907)463-1768

To: Lisa No. of pages transmitted: 1
(including transmittal page)

Fax #: 465-4507

From: Shelley Turner City and Borough of Juneau
School District

Regarding: we do not have a policy
which addresses part-time students.
It is addressed in DOE Adm. Reg.
4 AAC 05.035.

IF NOT RECEIVED CORRECTLY
PLEASE CALL BECKIE WILSON
AT THE JUNEAU SCHOOL DISTRICT
CENTRAL OFFICE (907)463-1700 EXT. 210



FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT

520 Fifth Avenue

Fairbanks, Alaska 99701-4756

(907) 452-2000



March 17, 1997

Attention: Lisa
Representative Fred Dyson
Alaska State Capitol, Room 428
Juneau, AK 99801

MAR 20 1997

Dear Representative Dyson:

I am writing this letter in response to your staff's query regarding whether or not the Fairbanks North Star Borough School District has been implementing the requirements of 4 AAC 05.035 regarding part-time students. For the past several years, Fairbanks has allowed part-time students, both elementary and secondary, to attend schools/classes in our schools. These students are coded as part-time and (if they were enrolled during our October count period) are included in official student enrollments.

Each year, the staff in our student records office reviews the class schedules of all secondary students and calculates the part-time FTE of each student based on the number of classes in which they are enrolled. Your proposed House Bill No. 158 would not cause our district to do anything different from what we have already been doing for years.

If you have any questions about this, feel free to contact either Mr. Bob Shefchik, the Assistant Superintendent for Business and Finance or myself at 452-2000.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Nicholas Stayrook', is written in black ink.

Dr. Nicholas Stayrook, Director
Program Planning and Evaluation

cc: Bob Shefchik

Instruction

MAR 25 1997

AR 6145.2 (a)

INTERSCHOLASTIC COMPETITION

A student may have the privilege to participate in the interscholastic program for four (4) years or eight (8) semesters after entering the ninth (9) grade of a four (4) year high school.

Eligibility for Co-Curricular Participation, Grades 9-12 - ASAA Semester Credit Rule:

In order to be eligible to participate in interscholastic athletics and cheerleading during any semester after completion of the first semester of ninth grade, a student must have passed, for the immediately preceding semester, at least four units of credit toward graduation.

1. A grade of "incomplete" is considered as not passing until the "incomplete" is changed on the official school records.
2. Correspondence study students must meet the same time frame as regular students.
3. Private school students who wish to participate in co-curricular activities must be registered in a minimum of two classes, equaling one semester unit of credit, in the school which is in their home boundary. All ASAA and Mat-Su Borough School District regulations and policies must be adhered to.
4. Must not have reached the age of nineteen (19) by August 1.

In addition to ASAA semester credit rules, the Mat-Su School District has established that students will be eligible to participate in AASA sanctioned activities if:

1. They are carrying a minimum of four classes that lead toward graduation.
2. They have passed four (4) or more courses during the semester immediately preceding the activities in question.
3. They earn a grade point average of at least 2.0 for all courses taken during the previous grading period. Grade point averages will be evaluated at the end of each quarter using the grades earned during the nine week grading period. Quarter grades will be used at the end of the quarters one and three. Semester grades will be used at the end of quarters two and four.

Note says.

"State statutes private stud attending public schools so we have never made it a specific policy because it is already covered under state statutes." →

Policy under State Statutes

MAR 12 1997

Gaye Willis
9345 Turn St.
Juneau, AK 99801
(907-789-7634)
gjwillis@aol.com

SUPPORT

The Honorable Fred Dyson,

Dear Sir,

I would like to express my support for **HB 158** regarding the right to attend school on a part-time basis. Clearly the Alaska State Constitution provides that all students shall have access to education. The current policy of some districts to prohibit part-time attendance violates that mandate.

I have three children, two are currently enrolled in our local district and one is in Alyeska Central School. During the past 5 years, we have used a combination of both options in choosing the best educational program for our children. My personal experience and my contact with other homeschool parents convince me that this bill is necessary to provide fair access to educational opportunities to all children in the state.

For two years our daughter was able to participate in choir at the middle school while doing correspondence. This best option for her was possible because she had a gifted and talented IEP in music. State law required district to service such children. Other students, without a G/T label, who would have benefitted from a similar opportunity, were denied access. This inequitable situation would be remedied with this bill.

Parents who choose correspondence, private schools, or homeschool should not be penalized or denied access to programs that are freely provided for other children within our state. They pay local taxes and contribute to our state. Educational discrimination against their children is wrong.

All Alaskan have a stake in providing the best education for our children. Please support this bill and open educational opportunities to all of our children.

Thank you,
Gaye Willis

cc:Mail for: Representative Fred Dyson

Subject: HB 158

From: Christine_OConnor@compuserve.com ("Christine N. O'Connor") at CC2MHS1 3/15/97 4:34 PM

To: Representative Fred Dyson at LAA_TRANS

Dear HESS Committee members,

March 15, 1997

I am writing to express my support for HB 158 which would allow homeschooled students to attend classes part time at public schools. I am a homeschooling Mother of two elementary age children. While I believe homeschooling is best for my family at this time, I would like the option of using public school classes as a supplement when my children get older.

Alaska politicians are constantly stating their commitment to excellence in education. Allowing students more access to public schools is a common sense step in achieving this excellence.

I urge you to support this bill and see that it becomes law. After all, it's only fair that my family be allowed to use facilities our tax dollars help pay for.

Sincerely,
Christine O'Connor

March 12, 1997

Rep. Con Bundy
Chair, HESS Committee

Please distribute the following testimony to all committee members:

I am writing on behalf of my spouse and myself on the issue of enacting legislation which would allow home-educated children the right to enroll in selected courses and extra-curricular activities offered by the Alaska public schools, specifically for us, within the Mat-Su Borough School District.

We are in full support of children being admitted to the public schools for 1 or more courses or activities, without any restrictions as to a minimum number of courses, or any requirements as to which type of courses they must take to be allowed to enroll part-time.

My husband is a public school teacher at Wasilla Middle School and endorses with enthusiasm the idea of having students partake in his classes who are genuinely

interested in being there. A student who chooses to enroll in a class, whether they are a regular member of the student body or not, would unquestionably be an asset to the class.

We both feel strongly as borough property tax payers that we, as home-educators, should be able to enroll our children in the schools our tax-monies are funding on our own terms. We are extremely interested in "education reform," and have taken it upon ourselves to do what we can for our own children, but still, our tax money, and therefore our concern, still goes out to the Mat-Su Borough School District, which at this point has nothing to offer us in return.

Thank you for your ear and your support in this matter, especially as you consider HB158.

Sincerely,

Sarah Mittelstadt Bean / River Bean
H104 Box 9043
Palmer, AK 99645 (907) 746-1087

Mrs. Sylvia Dean
2225 Meadow Lane
Juneau, AK 99801

MAR 19 1997

March 19, 1997

Rep. Fred Dyson and HESS Committee Members

Dear Rep. Fred Dyson and HESS Committee Members,

I would like to encourage your strong support for HB #158. This bill would serve the parents who are the most committed to their children's education with more options. One great need in our public school systems is parent support. The people concerned enough to put their children in home schools or private schools have shown their commitment to education by their investment of time and money. If they choose to use public school options it will be an asset to that system.

The public school need not fear large numbers as the people who are choosing other options have strong convictions about education. It may take more of the load of over crowding off public schools as other options open.

Sylvia Dean

"Home Schoolers access to taking part time classes in Public School"

My name is Sharlyee Zachary. My husband, Dan, and I home school 3 daughters. We home school the girls for a variety of reasons.

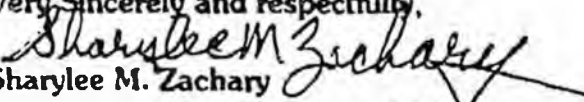
Some of these reasons are: 1) There are certain things that we want our girls schooled in that use to be taught but are no longer taught or allowed to be alluded to in the current public school curriculums. 2) The teachers already have their hands full and right now we are able to give our children personalized attention in their studies. 3) In a world where families are breaking apart, children are learning to be callous and on the 'attack' in order to protect themselves. They are bringing these attitudes to school. When children are constantly trying to defend themselves from the attacks of others, they cannot learn the positive character qualities that help them to reach out in compassion to those who are hurting. We want our children to be part of the 'healing' of our nation, not part of the problem.

We are a low-income family. We scrimp and sacrifice in many areas in order to home school. Our tax dollars go to help support the public school system. This means we pay twice. We have not complained. However, when we asked to be able to come in and use the elementary school library, we were told that it was against "policy" for home schoolers to check out books and that home schoolers were not allowed to even sit in the library and read the public school materials. I thought our taxes went to provide for these things. For several years, now I have been told from other home schooling families that we were not allowed to take any classes at the schools unless we took them all. Also, we are barred from extra-curricular activities. Even if we pay an extra fee for these things they are not available to us.

Two weeks ago I contacted the district offices to request a copy of the 'policies' of the school board regarding home schoolers. I wanted to know officially what was allowed and not allowed. I was told that there 'are no written down policies'. Yet, we are told that "policy says, 'no' to everything." It was interesting to me that last year, however, two home school boys who were very good at wrestling were allowed to join the team (I am happy for them). The boys were going to go to school the following year, but they were not in public school at that time. Interesting how 'policy' was put aside for the convenience of the coaches having a better team.

We are a small community with little or no access to certain things offered only in the public school system. Things like chemistry labs, foreign languages, band, etc. If our tax dollars go to provide these things for other children, why can we not use them, also? We are already doing our part not to overload the public school system and we are doing our best not to make waves.

Very Sincerely and respectfully,


Sharlyee M. Zachary

Box 1531 Petersburg, AK 99838 (907) 772-3681

cc:Mail for: Representative Fred Dyson

Subject: HB 158 Please Support this
From: charlieh@Alaska.NET (Charlie&Joanne Hardesty) at CC2MHS1 4/16/97 5:39 PM
To: Representative John Davies
To: Representative Pete Kelly
To: Representative Vic Kohring
To: Representative Terry Martin
To: Representative Fred Dyson
To: Representative Eldon Mulder
To: Representative Richard Foster
To: Representative Carl Moses@Legis.Alaska at CC2MHS1
To: Representative Ben Grussendorf@Legis.Alaska at CC2MHS1

APR 16 1997

Dear Representative:

I am fully in support of HB 158 which allows part-time school attendance for children attending private or home schools, or correspondence students. All children should have access to the public school system. In this area, students have been denied the right to access the schools for whatever reason the school district may decide upon.

All students should have the right to attend classes that may not be provided by correspondence or home schools. Lets keep Alaskan students at the top of the class and provide the young people of Alaska all the tools they need to educate themselves for the future.

My understanding is that the 1995 Alaska Administrative Code gives school districts the "option" of NOT allowing part-time students. HB 158 would correct this and would not allow schools to discriminate between students taking all their classes at school and those who need specialized classes not offered through their correspondence school or homeschool.

Property taxes, which are used for education, show no bias and neither should the schools.

Thank you for taking the time to read this letter. Please support HB 158.

Joanne Hardesty
Nikiski, AK
907-776-8137

cc:Mail for: Representative Fred Dyson

Subject: HB 158

From: slsites@juno.com at CC2MHS1 4/16/97 5:26 PM

APR 17 1997

To: Representative Fred Dyson at LAA_TRANS

This is to inform you that our family supports this bill. As homeschoolers of three children (one soon to be entering high school) we appreciate what this bill will provide. We feel that homeschoolers should have the option to join in on classes that they feel they are not able to provide in the home environment for whatever reason. As our tax dollars support the public school buildings and programs, we feel it only appropriate to be able to utilize them without having to be a full-time student of the district. Thank you for sponsoring this bill and for caring about Alaska's homeschoolers!

Sheldon & Lisa Sites
257 Charles St.
Fairbanks AK 99701
457-3725

cc:Mail for: Representative Fred Dyson

Subject: HB158

From: copperr@Alaska.NET at CC2MHS1 4/24/97 8:18 AM

APR 24 1997

To: Representative Fred Dyson at LAA_TRANS

Dear Representative Dyson,

I wish to state my support for HB158 which would allow part time attendance at state public schools. My husband and I teach our three children at home, and have only asked once in nine years to participate in an activity sponsored by the local school. I was denied at that time, due to "insurance reasons". I feel that we, as local citizens, should have access to our public facilities, whether we choose to use them on a full time basis or on an occasional basis. Although I may never see the need to enroll my children in a course taught at the local school, I do foresee the desire to have my children possibly participate in music festivals, career days, track meets, and other such events. To be able to use the library facilities would also be much appreciated.

I trust that you and your fellow representatives will vote to allow part time enrollment and use of public school facilities by families who have chosen to educate their own children.

Thank you.

Sincerely,

Ramona Henspeter

P.O. Box 98

Copper Center, AK 99573

cc:Mail for: Representative Fred Dyson

File 153

Subject: HB 158

From: bearcub@Alaska.NET (Julia Enzenberger) at CC2MHS1 4/25/97 8:28 AM

To: Representative Fred Dyson

APR 25 1997

I would like to ask that HB 158 be supported. This bill would make a radical difference in the educational opportunities of my child. She is a 14 year homeschooled student living in the Anchorage School District. My daughter does not want to attend public school full day as she has many interests that are better pursued in non-traditional settings. However, classes like chemistry and foreign language would be more easily learned in a traditional high school setting. Currently, our local high schools do not allow part-time attendance.

Shouldn't educational decisions be made on the basis of what works best for the student? HB 158 is a very pro-student bill, PLEASE VOTE YES, for the sake of the students. The more options we give students, the more successful students we will have.

JULIA ENZENBERGER
4885 Newcastle Way
Anchorage, AK 99503

Ms. Linda
8937 Haffner Ct

Hemphill

000-0000

Juneau

AK 99801

Distribution

Affiliation

Reg Voter

60

Y

Date POM Sent	Constituency	Bill Number	Response	Subject
03/13/97	N	HB 158	Supports	

I WOULD LIKE PRIVATE STUDENTS TO HAVE ACCESS TO THE PUBLIC SCHOOL SYSTEM WHICH WE SUPPORT WITH OUR TAX DOLLARS. SINCERELY, LINDA HEMPILL

Ms Ellen
POB 4040

Mickleon

745-6506

Palmer

AK 99645

Distribution

Affiliation

Reg Voter

08

U

Date POM Sent	Constituency	Bill Number	Response	Subject
03/13/97	N	HB 158	Supports	

IT WOULD BE A TREMEMDOUS OPPORTUNITY FOR HOMESCHOOLED CHILDREN TO BE ABLE TO JOIN CLASSES OFFERED IN PUBLIC SCHOOL ON AN INTEREST LEVEL THAT IS, AT TIMES DIFFICULT FOR PARENTS TO PRESENT. WE ARE PART OF A HOMESCHOOLING

COOPERATIVE GROUP WITH FIVE OTHER PARENTS. I WOULD STRONGLY BE INTERESTED TO SEE HB 158 PASSED.

Mrs Jocelyne
POB 875646

Urgitus

373-1699

Wasilla

AK 99687

Distribution

Affiliation

Reg Voter

08

U

Date POM Sent	Constituency	Bill Number	Response	Subject
03/13/97	N	HB 158	Supports	

WE ARE EXCITED AS PARENTS OF HOMESCHOOL CHILDREN BEING ABLE TO ATTEND CLASSES AT THE PUBLIC SCHOOL. FOR AN INDIVIDUAL STUDENT DEFINATELY EXCELS IN LEARNING WHEN A PERSONAL CHOICE OF SUBJECTS ARE BEING OFFERED. ALSO AS A

TAXPAYING FAMILY WE HELP SUPPORT OUR COMMUNITY, SO IN TURN ITS NICE THAT WE CAN ALSO USE THE SCHOOL SYSTEM FOR ADDITIONAL SUPPORT OF OUR CHILDRENS HOMESCHOOL EDUCATION.

Mrs Andrea
POB 878144

Weimer

892-7854

Wasilla

AK 99687

Distribution

Affiliation

Reg Voter

08

U

Date POM Sent	Constituency	Bill Number	Response	Subject
03/13/97	N	HB 158	Supports	

AS A HOMESCHOOLING MOTHER AND TAXPAYER/PROPERTY OWNER OF THIS COMMUNITY FOR OVER TWELVE YEARS, I ENCOURAGE YOU TO PASS BILL # 158. IT IS MY BELIEF THAT STUDENTS EXCEL IN SUBJECTS OF PERSONAL INTEREST. IN ADDITION, THE

SCHOOL DISTRICT OFFERS CLASSSED SUCH AS CHEMISTRY, BIOLOGY, ETC THAT BECOME DIFFICULT TO OFFER WITH HOMESCHOOLING.

1760 Williwaw Way

Distribution Affiliation Reg Voter

Wasilla AK 99654 08 U

Date POM Sent Constituency Bill Number Response Subject
03/13/97 N HB 158 Supports

I FEEL IT IS OF GREAT IMPORTANCE TO ALLOW HOMESCHOOL CHILDREN TO PARTICIPATE IN PUBLIC SCHOOL CLASSES AND ACTIVITIES. I HAVE BEEN A MEMBER OF THIS COMMUNITY FOR TEN YEARS AND WOULD LIKE MY CHILD TO ALSO FEEL SHE CAN

ACTIVELY TAKE PART IN PUBLIC PROGRAMS WHERE THE MAJORITY OF HER PEERS SPEND THEIR DAYS.

Ms. Sylvia C. Sullivan 835-3729
PO Box 2684

Distribution Affiliation Reg Voter

Valdez AK 99686 08 Alaskans Y

Date POM Sent Constituency Bill Number Response Subject
03/13/97 N HB 158 Opposes

YOUR BILL IS STATING A CHILD CAN GO TO SCHOOL ON A PART TIME BASIS UPON REQUEST. THE BILL NEEDS AMENDED TO INCLUDE REQUEST DEFINITION TO BE THAT OF THE PARENT OR GUARDIAN AND THE REASON WHY THE CHILD IS ONLY ATTENDING SCHOOL

PART TIME.

PHONE MESSAGE DATE 3/20 TIME 2:55 AM
FOR Fred
M Ellen ROGERS
OF
PHONE () 789-2077 EXT.
FAX MOBILE PAGER ()
MESSAGE called to let you know she supports HB 158

PHONE MESSAGE DATE 4/4 TIME 4:00 AM
FOR Fred
M Jim's Jean Dore
OF
PHONE 407 345-4832 EXT
FAX MOBILE PAGER ()
MESSAGE 100% support of HB 158. He's a taxpaying citizen and wants equal access. Homeschooling his 3yr old now.
SIGNED J

Ms. Sylvia
PO Box 2684

C Sullivan

835-3729

	Distribution	Affiliation	Reg Voter	
Valdez AK 99686	08	Alaskans	Y	
Date POM Sent	Constituency	Bill Number	Response	Subject
03/13/97	N	HB 158	Opposes	

YOUR BILL IS STATING A CHILD CAN GO TO SCHOOL ON A PART TIME BASIS UPON REQUEST. THE BILL NEEDS AMENDED TO INCLUDE REQUEST DEFINITION TO BE THAT OF THE PARENT OR GUARDIAN AND THE REASON WHY THE CHILD IS ONLY ATTENDING SCHOOL PART TIME.

Mr. Edgar
1043 W 74th Ave

Earnhart

349-1160

	Distribution	Affiliation	Reg Voter	
Anchorage AK 99518	12		Y	
Date POM Sent	Constituency	Bill Number	Response	Subject
03/21/97	N	HB 158	Opposes	

APPRECIATE YOUR CONCERN FOR INDIVIDUALS. ANYONE PROVIDED HOME SCHOOLING IN ANCHORAGE IS ALREADY PRIVILEGED. PUBLIC LIBRARY, SPORTS AND OTHER CLUBS, ETC. PROVIDE OPPORTUNITIES. NO LEGISLATION NEEDED. REFERENCE MY

TESTIMONY ON THURSDAY, AYN RAND'S 'ANTHEM' IS LADEN WITH VALUES OF SELFISHNESS AND NARCISSISM, SO IT SHOULD MEAN AS PREFERRED SOPHOMORE READING.

Anchorage Daily News



Fuller A. Cowell
Publisher

Kent Pollock
Editor

Michael Carey, Editorial Page Editor

Gerald E. Grilly, Publisher, 1984-1993
Katherine Fanning, Editor and Publisher, 1971-1983
Lawrence Fanning, Editor and Publisher, 1937-1971
Founded in 1946 by Norman C. Brown

Part-timers

Opening up public school enrollment

The Anchorage School District won't let HB 158 become law without a protest. The bill, sponsored by Rep. Fred Dyson, would force the state's school districts to enroll part-time students. While the proposal has led the state's biggest district to express legitimate concerns, it should pass the Legislature.

Alaska's Constitution requires that legislators "maintain a system of public schools open to all children of the State." State law was changed a few years back to allow districts to "permit" part-time enrollment. The Dyson proposal, which unanimously passed the House last week and now sits in the Senate, is in keeping with the constitution.

In making arguments against the change, Anchorage Superintendent Bob Christal is persuasive — to a point. He raises legitimate concerns about increased class sizes, legal challenges and administrative headaches.

But in presenting a written summary against HB 158 to a House committee, he weakened his argument by raising questions that are answered in current state regulations. For example, the superintendent asks, "What leeway will a district have to reject a part-time applicant because particular courses or programs are already full?"

Current rules say part-time students may be enrolled "if space is available in a course in which the student desires to enroll after full-time public school students have had an opportunity to enroll."

Clear enough.

What is not so clear is the Legislature's commitment to fully fund education. The state's funding formula, which determines how much money a district gets for each student, has only been increased once in nearly a decade.

Meanwhile, school districts must economize and cut corners even as they try to improve education and absorb new students. Rejuggling the formula won't solely do the trick; such a move will only shift the pain among the state's schools.

If Rep. Dyson has his way, officials with the Anchorage School District will have to bite the bullet and enroll part-time students. As onerous as that may seem to some, and as pinched as the district is for dollars, part-time enrollment won't spell Armageddon for local schools.

1011-7
5/1/97

April 26, 1997

APR 28 1997

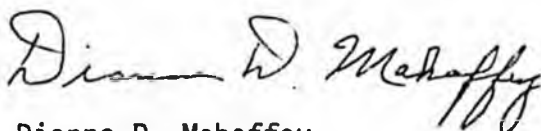
Governor Tony Knowles
Senator Tim Kelly
Representative Fred Dyson
Representative Ramona Barnes

RE: Bill Requiring Anchorage School District to Allow Part-time Students

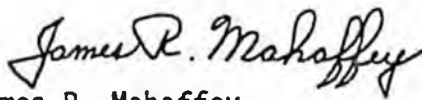
We are opposed to this bill approved by the Alaska House that requires the Anchorage School District to allow part-time students. It should remain an option for each district.

Students who elect to attend private schools or students who are home-schooled have made the choice that the public school system is not for them; therefore, they should abide by that decision and expect to "round out" their education on their own. If they are accepted into the public system, they should be required to pay tuition at the "going rate."

Even though the local system can be reimbursed by the state for these students' participation, the public still bears the expense!



Dianne D. Mahaffey
9601 Midden Way
Anchorage, AK 99507



James R. Mahaffey

cc:Mail for: Representative Fred Dyson

File
HB 158

Subject: HB 158

From: smokybay@xyz.net (Smoky Bay School) at CC2MHS1 3/19/97 12:14 PM

To: Representative Fred Dyson at LAA_TRANS

APR 30 1997

Dir Sir,

My name is Josh Krohn. I graduated in 1995 by private school, missing out on opportunities like football. House Bill 158 would allow others following the program I followed access to the public schools. It doesn't make sense to me that a person should have to do exactly as the school borough dictates to take classes. I was by the grace of a friendship allowed to participate in the choir program. However, when the school district started to take notice, I was grandfathered in until I graduated, and no one else can have that opportunity. It seems unjust, by the mission of this nation, that all have the right to an education, and we don't have the freedom to design our education to fit our personal needs. Let me explain the most common excuse I hear from my school district: "You can't play football because that's all you will do." When I graduated from school, I graduated with 34 credits. That's 12 more than public school students graduate with. I strongly encourage you to pass HB 158. It would affect the education of young people in a positive way.

Josh Krohn

Regarding Senate Bill No. 134 Wednesday, May 7, 1997

"Home Schooling Education program" Senate HESS Committee

My name is Sharlyee Zachary. My husband, Dan, and I home school 3 daughters. We home school the girls for a variety of reasons.

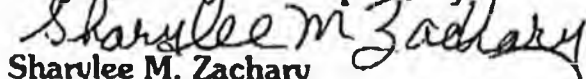
Some of these reasons are: 1) There are certain things that we want our girls schooled in that use to be taught but are no longer taught or allowed to be alluded to in the current public school curriculums. 2) The teachers already have their hands full and right now we are able to give our children personalized attention in their studies. 3) In a world where families are breaking apart, children are learning to be callous and on the 'attack' in order to protect themselves. They are bringing these attitudes to school. When children are constantly trying to defend themselves from the attacks of others, they cannot learn the positive character qualities that help them to reach out in compassion to those who are hurting. We want our children to be part of the 'healing' of our nation, not part of the problem.

We are a low-income family. We scrimp and sacrifice in many areas in order to home school. Our tax dollars go to help support the public school system. This means we pay twice. We have not complained. However, when we asked to be able to come in and use the elementary school library, we were told that it was against "policy" for home schoolers to check out books and that home schoolers were not allowed to even sit in the library and read the public school materials. I thought our taxes went to provide for these things. For several years, now, I have been told from other home schooling families that we were not allowed to take any classes at the schools unless we took them all. Also, we are barred from extra-curricular activities. Even if we were to pay an extra fee for these things they are not available to us.

Several weeks ago I contacted the district offices to request a copy of the 'policies' of the school board regarding home schoolers. I wanted to know officially what was allowed and not allowed. I was told that there 'are no written down policies'. Yet, we are told that "policy says, 'no' to everything." It was interesting to me that last year, however, two home school boys who were very good at wrestling were allowed to join the team (I am happy for them). The boys were going to go to school the following year, but they were not in public school at that time. Interesting how 'policy' was put aside for the convenience of the coaches having a better team.

We are a small community with little or no access to certain things offered only in the public school system. Things like chemistry labs, foreign languages, band, school library geared toward age-related information, etc. If our tax dollars go to provide these things for other children, why can we not use them, also? We are already doing our part not to overload the public school system and we are doing our best not to make waves.

Very Sincerely and respectfully,



Sharlyee M. Zachary

Box 1531 Petersburg, AK 99833 (907) 772-3681

Regarding House Bill No. 158 Wednesday, May 7, 1997
Regarding Senate Bill No. 134 Wednesday, May 7, 1997

"Home Schooling Education program" Senate HESS Committee

I would like to express my support for this bill.

My wife and I have chosen to home school our children. There may be situations where we would like to take advantage of some of the programs at the local public school. If we would choose to enroll our students full time at the public school, the school would be obligated to accept our children and pay for their entire education. Because we choose to take *primary responsibility for educating our children and pay for this ourselves* and we only ask to participate a little bit in the program, current state regulations say that our local school board can consider our children ineligible for a partial public education! They can even deny us entrance into the school even if we offer to pay for the classes! Is that right?

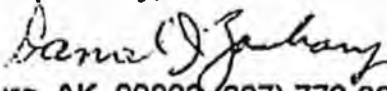
I read the press release from the Alaska House when this bill passed that chamber recently. It indicated that the current funding formula for public schools gives a premium amount of money to local school districts for part time students, (if they choose to accept them). I don't understand a school district that turns away students that would generate a premium amount of funding, simply because the student is part time.

Currently "would-be" part time students in Petersburg are turned away with an "it's against school policy", or "we don't have to accommodate part time students" answer. I feel that this bill will give us as parents, a solid position to stand upon when we approach our Petersburg schools and request to participate in some of their programs. It gives us the backing of the state that part time students are to be supported and not discriminated against.

A number of people who have testified against this bill say they fear that these part time students will only be taking the "expensive" courses at the public schools creating an inordinate financial burden to the schools. If I attend a public college and I take a course with extra expenses such as a lab, there is usually a "lab" fee or a surcharge for special curriculum items. Thus there is additional income to the school for the more expensive classes. Also note that the funding for part time students is a premium amount. If this is really an issue perhaps the funding formula can include an amount for these specialty courses. (Maybe that is why the premium is included already).

I urge this committee and the full senate to support this legislation.

Very Sincerely and respectfully,

Daniel J. Zachary 
Box 1531 Petersburg, AK 99833 (907) 772-3681



Lawrence A. Wiget, Ed.D.
Director, Government Relations/Legislative Liaison
Anchorage School District
4600 Debarr Road
Anchorage, Alaska 99519-6614
(W) 907 269-2255 (FAX) 907 269-2340

TO: House HESS

Subject: HB 158

Date: March 13, 1997

The Anchorage School District opposes the passage of HB 158. Attached please find legal research and a position paper prepared for the District in year's past regarding this issue which we believe supports our position on this bill.

Thank you!



November 20, 1995

Mark Begich
Assembly Vice-Chair
P.O. Box 201627
Anchorage, AK 99520

**Anchorage
School
District**

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

Dear Mark:

You requested information on whether the Anchorage School District allows children who attend home school or a private school to participate in sports or other extracurricular activities at their area school. You also requested a copy of the written policy that addresses this issue and the reasons for the decision.

SCHOOL BOARD

Peggy Robinson-Wilson
President

Lorraine M. Ferrell
Vice President

Hamet A. Drummond
Clerk

Patti Higgins
Treasurer

Kathi Gillespie

Kelly Haney

Debbie Ossiander
Past President

SUPERINTENDENT

Bob Christal

On January 10, 1994 the School Board unanimously passed (7-0) Memorandum #244 which opposed the Proposed Changes in the Regulations of the Department of Education Memorandum Number 94-07, Subject: Participation in Public Education Programs. I have included this Memorandum as Attachment A.

The School Board reaffirmed the Administrative recommendation to continue with the District's then current practices of not allowing private or home school students to participate in sports or other extracurricular activities and other educational programs. Included with this letter is a copy of the official minutes of the meeting (Attachment C) and the notification of this position to employees (Attachment D).

Extensive legal research was done preparing the District's position paper prior to testifying before the State Board of Education in the Summer and Fall of 1993 and into the winter of 1994. I have included that information for your use as Attachment B.

I hope that this response answers your questions. Please do not hesitate to contact me, Bill Mell, or Carol Comeau if you have need for additional information.

Sincerely,

Bob Christal
Superintendent

cc Carol Comeau
Bill Mell

ANCHORAGE SCHOOL DISTRICT
ANCHORAGE, ALASKA

ASD MEMORANDUM #244 (93-94)

January 10, 1994

TO: SCHOOL BOARD

FROM: OFFICE OF THE SUPERINTENDENT *Ed Christie*

SUBJECT: RESPONSE TO PROPOSED CHANGES IN REGULATIONS OF
THE DEPARTMENT OF EDUCATION: PRIVATE SCHOOLS'
STUDENTS PARTICIPATION IN PUBLIC SCHOOLS

RECOMMENDATION

It is recommended that the School Board support the Administration's position in opposition to the Proposed Changes in the Regulations of the Department of Education Memorandum Number 94-07, Subject: Participation in Public Education Programs.

- (1) 4 AAC 05.035 is proposed to be adopted as follows:
Regarding part-time enrollment of private, correspondence, and home school students in their local public schools.
- (2) 4 AAC 90.015 (k) is proposed to be adopted and 4 AAC 09.040 is proposed to be amended as follows:
To prescribe a method for counting part-time students for funding under the state's public school foundation funding program.
- (3) 4 AAC 06.111 is amended as follows:
Regarding the participation of private, correspondence, and home school students in the interscholastic activities of public schools.

It is recommended that the School Board approve the Administration's recommendation to oppose the proposed changes and continue with current regulations.

PERTINENT FACTS

The Anchorage School Board has previously received substantial back-up information on the District's position on the ability of non-public school students to participate in selected aspects of the public school program. The State School Board is considering regulations that will require public school districts to allow private school, home school and correspondence school students to participate in public school programs including after-school activities on a part-time basis

while retaining their status as non-public school students. A Public Hearing is scheduled for January 19, 1994 in Anchorage on these issues. Due to Anchorage School District involvement in a law-suit on one aspect of this issue, extensive research has been done in this area. The administration opinion on each of the three proposed regulations is discussed below.

- (1) 4 AAC 05.035 is proposed to be adapted as follows:
Regarding part-time enrollment of private, correspondence, and home school students in their local public schools.

It is our position that permitting private school students to attend public school classes would violate the Alaska Constitution's prohibitions against providing direct benefits to private schools and appropriating public funds for non-public purposes. In addition, permitting private school students to attend public school classes would likely violate the Establishment Clause of both the state and federal constitutions. By taking over a portion of the parochial schools' responsibility for teaching secular subjects, the District would, in effect, be subsidizing the religious functions of the parochial schools. Although these constitutional prohibitions do not apply to Centralized Correspondence School students, the District would not be required, under state or federal law, to permit CCS students to attend District classes.

- (2) 4 AAC 09.014 (k) is proposed to be adopted and 4 AAC 09.040 is proposed to be amended as follows:
To prescribe a method for counting part-time students for funding under the state's public school foundation funding program.

Current regulations require the District to report students by membership. With the exception of students attending the King Center, all students enrolled are counted as full-time students. This practice has been satisfactory to the Department of Education in the past. The proposed change may reduce the total number of instructional units on which state funding for the District is based, thereby lowering the actual amount of state foundation support to which the District is entitled. The change in the regulation is an attempt to appear to fund participation by part-time non-public school students. The actual result will be either serving the same student population with less state funding or serving a larger student population with current levels of funding. It is our opinion the proposed change will not provide additional funding for operation of schools and will increase pupil accounting cost significantly.

- (3) 4 AAC 06.111 is amended as follows:
Regarding the participation of private, correspondence, and home school students in the interscholastic activities of public schools.

It is our position that neither state nor federal law requires the District to permit non-ASD students, whether from private schools or CCS, to participate in District

sponsored extracurricular activities. A much more difficult question is whether the U.S. Constitution and the Alaska Constitution actually prohibit private school students from participating in public school extracurricular activities. Based on our review of state and federal case law, it is possible that the courts would find that the state and federal constitutions neither prohibit nor mandate such participation by non-ASD students, thereby relegating the matter to the discretion of state and local school boards. It is our position that this remain a board issue.

In summary, the District is not required to permit non-ASD students to participate in District sponsored activities, the District is probably prohibited by both state and federal constitutions from permitting private school students to attend regular education classes, and the District will not benefit from the proposed changes in pupil accounting practices. The proposed changes are therefore not recommended.

We realize there may be limited opposition from other school districts in the State since many of the districts will not be faced with dealing with the issues because of the limited numbers of students in their districts and the lack of private school options in these districts. Nevertheless, it is an important issue in Anchorage and we cannot support the recommended changes.

BC/WFM/mh

Municipality
of
Anchorage



Mark Begich

Anchorage Assembly
P.O. Box 201627
Anchorage, Alaska 99520

October 31, 1995

Bob Christal, Superintendent
Anchorage School District
P.O. Box 196614
Anchorage, Alaska 99519-6614

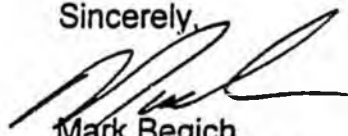
Dear Bob:

I have recently received a letter from a constituent requesting the Anchorage Assembly to pass an ordinance related to student participation in school sports. I know this is totally out of our "arena", but I would appreciate you sharing the following information:

Does the Anchorage School District not let children who home school or attend private school, participate in sports or other extracurricular activities at their area school? If this is indeed the case, could you send me a copy of the written policy that addresses this issue and the reasons for this decision?

Thanks in advance for your time.

Sincerely,


Mark Begich
Assembly Vice-Chair

*See
letter +
attachments*

*Copy to
Carol
Bill M.
Please
prepare a
response
letter for
me*

95 NOV -2 AM 11:11

5-1900


Attachment B

ANCHORAGE SCHOOL DISTRICT
ANCHORAGE, ALASKA

MEMORANDUM

January 7, 1994

TO: SCHOOL BOARD

FROM: BOB CHRISTAL 
SUPERINTENDENT

SUBJECT: PROPOSED DEPARTMENT OF EDUCATION REGULATIONS
REGARDING PRIVATE SCHOOL STUDENTS INVOLVEMENT
IN PUBLIC SCHOOLS

I provided to you in October the information regarding our position on the proposed Department of Education regulations that allow for private school students participation in selected courses and school activities. I have provided that again for you in case you have not retained the packet.

Our position administratively is to oppose these regulations for several reasons. If the School Board does not agree with this direction, we should know that prior to our presentation to the State Board of Education on January 19, 1994. I have placed this item on the agenda for Monday night after consulting with Board President, Sharon Richards.

gl
Attachment

ANCHORAGE SCHOOL DISTRICT
ANCHORAGE, ALASKA

ASD MEMORANDUM

October 22, 1993

TO: SCHOOL BOARD

FROM: OFFICE OF THE SUPERINTENDENT *Bald Christensen*

SUBJECT: PRIVATE SCHOOL STUDENTS IN-DISTRICT PROGRAMS

There has been a series of requests by parents of students attending private schools for access to regular classes and extra-curricular activities over the past several months. In order to check our current practice and position in relation to the Blomfield law suit (demanding access to junior high activities) and other questions potential and actual, legal council was requested to prepare a position paper for our review. The paper is attached as item A.

The issues discussed are:

1. Is the District required, prohibited or permitted under state and federal law to allow students who are enrolled in private schools or the Alaska Centralized Correspondence Studies Program ("CCS") to participate in District sponsored extracurricular activities?
2. Is the District required, prohibited or permitted under state or federal law to allow students who are enrolled in private schools or the CCS to attend regular education classes in the Anchorage School District?
3. Do the answers to issues #1 and #2 differ for special education students who are enrolled in private schools or CCS and wish to attend regular education classes in the District or participate in District sponsored extracurricular activities?
4. If the District is permitted or required to allow private school or CCS students to attend classes on less than a full-time basis and/or participate in extracurricular activities, may the District count these students for purposes of receiving state funding under the Alaska public school foundation program?
5. May the District enroll home school students in the District and count them for state foundation funding by providing them with a

correspondence study program which the District obtains by contracting with the Alaska Centralized Correspondence Studies Program?

In summary current practice is within the scope of the law as it now exists. We are aware that the state is interested in expanding the rights of private school students access to public school programs. The Department of Education has proposed private school regulations that will be discussed by the State School Board on Friday, October 29, 1993, in Fairbanks. The announcement dated October 13, 1993, is attached as item B. This will be an item extensively discussed over the next several months and has the potential of ~~attaining~~ ASD policy and practice in these areas.

^{changing}
BC/WFM/rs

ITEM A

PRIVATE SCHOOL PARTICIPATION
POSITION PAPER

**THE FOLLOWING PAGES MAY
NOT FILM LEGIBLY BECAUSE OF
THE POOR QUALITY OF THE ORIGINAL**

MEMORANDUM

Attorney-Client Privileged

TO: Carol Comeau, Ex. Dir. Elementary Education
Bill Mell, Ex. Dir. Secondary Education

FROM: Laurel Tatsuda *LKT*

DATE: September 27, 1993

RE: Participation By Private School Students In District
Classes Or Extracurricular Activities

INTRODUCTION: A number of parents, whose children are enrolled or desire to be enrolled in private schools,¹ have asked the Anchorage School District to allow their children to attend a particular class offered by the District or participate in District sponsored extracurricular activities. Presently, the District is a defendant in a lawsuit brought by one such parent who alleges that the District's policy of permitting only students enrolled in the District to participate in extracurricular activities is unconstitutional.² Participation by private school or homeschool students in District classes or extracurricular activities raises both legal and policy considerations. This memorandum will discuss the types of requests that have been made and the legal and/or policy considerations raised by each category of request.

REQUESTS BY PARENTS:

1. Parents of an elementary age homeschool student have

The Alaska Constitution does not distinguish between religious or non-religious affiliated private schools for purposes of public funding. It provides that "[n]o money shall be paid from public funds for the direct benefit of any religious or other private educational institution." AK. Const. art. VII, §1 (emphasis added). Therefore, for purposes of this memorandum, I will use the term "private school" to include both religious and non-religious affiliated private schools. Homeschool students who are enrolled in the Alaska Centralized Correspondence Studies ("CCS") program will be considered to be public school students.

² Sandra I. Blomfield, minor children, A.J.B.; L.A.B.; and M.S.G. v. Anchorage School District; Alaska School Activities Association, Inc.; and the State Board of Education, Case No. 3AN 93-2740 Civil (Super.Crt. Anchorage filed April 6, 1993).

requested that their child be permitted to attend band classes which meet four days per week at Oceanview Elementary School. In addition, an elementary age homeschool student has asked to compete in the Young Composers Contest which is only available to ASD students.

2. Parents of junior and senior high age students who are currently enrolled in the Anchorage School District wish to send their children to a private religious-affiliated school and would do so if the ASD would allow their children to participate in District sponsored ASAA sanctioned activities while enrolled at the private school.

3. Parents of a special education student who was formerly enrolled in the ASD but who is now enrolled in a private school have requested that their child be permitted to continue taking a foreign language class at a District high school in accordance with the child's individualized education plan (IEP).

4. Parents of a special education student who was formerly enrolled in the ASD but who is now enrolled in a private school have requested that their child be permitted to continue taking a band class at a District high school. Several other special education students who are enrolled in the same private school have indicated that they, too, would like to attend band classes in the Anchorage School District.

ISSUES PRESENTED:

1. Is the District required, prohibited or permitted under state or federal law to allow students who are enrolled in private schools or the Alaska Centralized Correspondence Studies Program ("CCS") to participate in District sponsored extracurricular activities?

2. Is the District required, prohibited or permitted under state or federal law to allow students who are enrolled in private schools or the CCS to attend regular education classes in the Anchorage School District?

3. Do the answers to issues #1 and #2 differ for special education students who are enrolled in private schools or CCS and wish to attend regular education classes in the District or participate in District sponsored extracurricular activities?

4. If the District is permitted or required to allow private school or CCS students to attend classes on less than a full-time basis and/or participate in extracurricular activities, may the District count these students for purposes of receiving state funding under the Alaska public school foundation program?

5. May the District enroll homeschool students in the

District and count them for state foundation funding by providing them with a correspondence study program which the District obtains by contracting with the Alaska Centralized Correspondence Studies Program?

SHORT ANSWERS:

1. Re: Extracurricular Activities: It is our opinion that neither state nor federal law requires the District to permit non-ASD students, whether from private schools or CCS, to participate in District sponsored extracurricular activities. A much more difficult question is whether the U.S. Constitution and/or the Alaska Constitution actually prohibit private school students from participating in public school extracurricular activities. Based on our review of state and federal case law, it is possible that the courts would find that the state and federal constitutions neither prohibit nor mandate such participation by non-ASD students, thereby relegating the matter to the discretion of state and local school boards.

2. Re: Regular Education Classes: It is our opinion that permitting private school students to attend public school classes would violate the Alaska Constitution's prohibitions against providing direct benefits to private schools and appropriating public funds for non-public purposes. In addition, permitting private school students to attend public school classes would likely violate the Establishment Clause of both the state and federal constitutions. By taking over a portion of the parochial schools' responsibility for teaching secular subjects, the District would, in effect, be subsidizing the religious functions of the parochial schools. Although these constitutional prohibitions do not apply to CCS students, the District would not be required, under state or federal law, to permit CCS students to attend District classes.

3. Re: Special Education Students: State and federal statutes require the District to make special education and related services available to children who attend private schools/CCS within the District. The statutes require the District to provide a free appropriate education in conformity with each student's individualized education program ("IEP"). Thus, if the student's IEP specifies a particular class or extracurricular activity, the District is obligated to permit the private school student to attend the specified ASD class, whether it be a special education or regular education class, and participate in the ASD extracurricular activity. However, in the absence of a requirement in the IEP, the same constitutional considerations discussed in paragraphs #1 and #2 above would apply to special education students enrolled in private schools. A student's IEP may be reevaluated and modified by a properly convened IEP meeting and in accordance with state and federal regulations. Although the District need not provide particular classes to private school/CCS

special education students simply because the students or parents prefer such classes, the District may not, on the other hand, totally exclude regular District classes and extracurricular activities from being considered by an IEP team.

4. Re: State Foundation Funding: The Alaska Public School Foundation Program ("PSFP") is silent on whether students who are enrolled in private schools and attend only one or two classes in the District may be counted in regular education ADM. The PSFP permits the District to receive special education funding for private school and CCS special education students who reside in the District and receive services from the District. The PSFP appears to prohibit CCS students from being counted in both CCS and a local school district under the regular education ADM formula.

5. Re: Contracting With CCS: The District may contract with CCS for materials and teaching services for its students. The CCS Courses and Services Price List (1992-1993) indicates that under such an arrangement, the District "collects funding for the students and pays a fee for CCS services." We have not yet received a copy of the most current CCS Handbook which may provide a more detailed explanation of this service.

DISCUSSION:

1. Is The District Required, Prohibited Or Permitted Under State Or Federal Law to Allow Students Who Are Enrolled In Private Schools Or CCS To Participate In District Sponsored Extracurricular Activities Or Regular Education Classes?

We have previously provided the District with a legal opinion regarding the constitutionality of permitting private school students to participate in District sponsored classes and activities. See "Legality of Policy Allowing Students From Local Private Schools to Attend District Classes," Memorandum to Fred Stoffler, dated January 24, 1992, attached hereto as Exhibit A. We believe our previous opinion is still valid and therefore will not repeat the legal analysis provided therein.

It is necessary, however, to clarify our previous opinion insofar as it did not distinguish between academic classes and extracurricular activities. Under the Alaska PSFP, the District does not receive categorical funding for extracurricular activities. Although these activities are, of course, paid for by public funds, it might be difficult to quantify any financial benefit to an individual student or private school. It is therefore possible that the Alaska courts would treat participation by private school students in extracurricular activities differently from participation in regular education classes where state aid is generated by the number of students in average daily

membership. This distinction could prompt the Alaska courts to determine that any benefit to private schools from participation by its students in public school extracurricular activities is merely indirect, incidental and insubstantial. Although we believe it is unlikely that the court would mandate that the District permit private school students to participate in extracurricular activities,³ it is possible that the court would rule that such participation does not violate either the state or federal constitutions and is therefore permissive."

Interestingly, we have just received notice from the ASAA that the Commissioner of Education plans to announce that the Department of Education recommends changing the ASAA Bylaws to

³ Courts which have addressed the issue of participation in interscholastic activities have generally held that such participation is not a property right, but rather a privilege which the school may deny or withdraw if the student fails to qualify for the privilege. See e.g., Denis J. O'Connell High Sch. v. Virginia High Sch., 581 F.2d 81 (4th Cir. 1978) (participation in interscholastic activities not a federally protected property right); accord Mitchell v. Louisiana High School Athletic Association, 430 F.2d 115 (5th Cir. 1970); Hamilton v. Tenn. Secondary Sch. Athletic Ass'n, 552 F.2d 681 (6th Cir. 1976); Cooper v. Oregon School Activities Ass'n, 629 P.2d 386 (Or.App. 1981). Therefore, in the absence of a finding that the District's eligibility policies are arbitrary and capricious, it is unlikely that the courts would order the District to allow non-ASD students to participate in extracurricular activities.

It is uncertain whether the Alaska courts will continue to rely on the strict interpretation of what constitutes a "direct benefit" or a "public purpose" that it formulated in Matthews v. Quinton, 362 P.2d 932 (Alaska 1961). In that case, the Alaska Supreme Court held that free transportation for private school children to non-public schools violated the "direct benefit" and "public purpose" provisions of the Alaska Constitution, even though the U.S. Supreme Court had ruled in similar cases that such transportation did not violate the U.S. Constitution. See Everson v. Board of Educ., 330 U.S. 1 (1947) (upholding New Jersey law providing free public transportation for public and parochial schools). Although the Alaska Supreme Court has not overruled Matthews, it has questioned its continuing validity. See Sheldon Jackson College v. State, 599 P.2d 127, 130 n. 4 (Alaska 1979). Currently, there is litigation pending in the Fairbanks superior court over the constitutionality of providing free transportation of children to non-public schools. This litigation was prompted by a memorandum from the Alaska Commissioner of Education disapproving the funding of such transportation for the 1993-1994 school year. See Numbered Memorandum 94-02, dated August 20, 1993, attached hereto as Exhibit B.

permit a home/private school student to participate on public school teams. See Memorandum to ASAA Board of Control, dated September 21, 1993, attached hereto as Exhibit C. It is our understanding that a formal announcement will be made by the Commissioner at the October State Board of Education meeting. We have been told that the Commissioner will recommend that local school boards be permitted to formulate local policy on whether to permit home/private school students to participate on school teams. We do not know what ASAA's position will be on this matter. However, even if ASAA were to change its rule to permit home/private school students to play on public school teams, the Anchorage School District would not be required to allow such participation. We recommend that the District let the ASAA and the State Board of Education know its views on this matter.

2. Must Or May The District Allow Special Education Students Who Are Enrolled In Private Schools/CCS To Attend Regular Education Classes in the District Or Participate in Extracurricular Activities Sponsored By the District?

State and Federal statutes pertaining to the education of handicapped students require public school districts to make special education and related services available to children who attend private schools within the district.³ 34 C.F.R. §300.451; 4 AAC 52.230. The special education services must be provided in conformity with each student's individualized education program ("IEP"). AS 14.30.278; 4 AAC 52.140. Whether a private school special education student is entitled to participate in a public school class or activity is determined by the student's current IEP. Gregory K. v. Longview School Dist., 811 F.2d 1307 (9th Cir. 1987) (public school is not required to provide special education student who has enrolled in a private school with continued tutoring by a particular tutor as such tutoring was not specified in the IEP). Thus, if a particular class or activity was provided in the public school under the student's IEP, the public school would be required to permit the special education student to participate in the class or activity even though the student is now enrolled in a private school.

A student's IEP, however, may be reconsidered and modified by a properly convened IEP team in accordance with procedures specified in state regulations. Although the courts will require school districts to follow the proper procedures for

³ The Alaska Centralized Correspondence Studies Program does not provide special education services. Under Alaska law, the local school district must provide these services to special education students enrolled in CCS. AS 14.30.186 (a borough or city school district shall provide special education and related services for exceptional children residing in the district).

reevaluating a student's IEP, they have held, nevertheless, that a free appropriate education does not mean the absolutely best or "potential-maximizing" education for the individual child. Gregory K. at 1314. Public schools are only required to provide services that are necessary in order for the special education student to benefit educationally. Livingston v. DeSoto County School Dist., 782 F.Supp 1173 (N.D.Miss. 1992). Thus, public schools are not required to provide a special education student with each and every special service available to non-special education students or services simply preferred by the student. Reitig v. Kent City School Dist., 788 F.2d 328 (6th Cir. 1986) (holding that the EHA does not mandate that the IEP provide equal opportunities for participation in extracurricular activities by handicapped students). Moreover, the law views each handicapped student as having unique needs entitled to individual consideration. Bd. of Educ., Sacramento City School D. v. Holland, 786 F.Supp. 874 (E.D.Cal. 1992). Therefore, the needs of one child do not extend to a group or category of handicapped children. Id. at 878.

Because the law focuses on each child's individual needs, the District would not be able to place a "blanket" prohibition on developing IEPs which allow private school students to participate in public school regular classes and activities. At the same time, one student's IEP, which specifies that the student should be placed in a band class, does not give all other special education students the right to enroll in band. In the absence of a requirement in an IEP, the District would be under the same constitutional restraints as for regular students who attend private schools and wish to attend a class at the District or participate in extracurricular activities. See Cavallaro By Cavallaro v. Ambach, 575 F.Supp. 171 (W.D.N.Y. 1983) (handicapped student is subject to same eligibility rules for regular students where wrestling was not part of student's IEP).

3. The Alaska Public School Foundation Program

The Alaska PSFP is silent on whether the District may count in regular education ADM those students who attend only one or two classes in the District. The formula for calculating ADM does not provide for part-time weighting of students in grades 1-12.⁵ Thus, if the District were to count these students, it would get full credit for them under the current ADM formula. Whether the District is entitled to count students who attend only one or two classes may depend, in part, on the District's definition of what it means to be "enrolled" in the District. This term is not

⁵ The statute does allow for half-time kindergarten students and part-time CCS students. AS 14.17.041; 4 AAC 09.040.

defined by the PSFP with regards to regular education.⁷

The PSFP does provide special education funding for private school/CCS special education students who reside in the district and receive special education services from the District. See AS 14.17.045.

Regarding CCS students, the regulations state that students who enroll in CCS and then voluntarily drop the program during a school year without permission for good cause, may not be included in a local school district's computation of ADM for that school year. 4 AAC 33.030. The local school district may, however, charge the student the same tuition rate which it charges students who attend its school who reside outside the school district. Id. A recent opinion by the Alaska Attorney General's Office suggests that a student may not be concurrently enrolled in CCS and a local school district for purposes of foundation funding. See Memorandum by Janice Greg Levy, Assistant Attorney General, dated March 18, 1993, attached hereto as Exhibit D.

Any decision to count private school/CCS students in the District's ADM should be carefully considered by the District. In addition to the constitutional issues implicated by the provision of state aid for private school students, the District may risk having to pay back funds to the Department of Education for improperly including "non-enrolled" students in its student count. Probably the only safe way to determine this issue is to ask the Department of Education.

4. May The District Contract With CCS For Materials And Services For Homeschool Students And Thereby Consider The Homeschool Students To Be Enrolled In the District?

Although we have not reviewed the most current CCS Handbook, the CCS Courses and Services Price List (1992-1993) states that CCS can support a local district program by teaching its students. Under this arrangement, the District would purchase CCS materials and teaching services for its students through the District. The District would collect funding for the students and would pay a fee to CCS for their services. See Exhibit E. The District may want to get more details from CCS regarding this arrangement which seems to suggest that the District would be able to count homeschool students in the District's ADM. This could be beneficial to both students and the District. The District would benefit if the fee paid to CCS was less than the state funding generated by the homeschool students. The students would benefit

⁷ By contrast, the regulations define full-time enrollment for CCS as four or more carnegie units of work for the year, or two or more carnegie units for the semester. 4 AAC 09.040.

by being properly enrolled in the District and thereby eligible for participation in extracurricular activities such as band.

CONCLUSION:

The District is not required to permit non-ASD students to participate in District sponsored extracurricular activities. The District is probably prohibited by both the state and federal constitutions from permitting private school students to attend regular education classes. The District must provide special education students who have enrolled in private schools an appropriate education in conformity with the student's current IEP.

The Alaska PSFP is silent regarding funding for part-time students in regular education. The PSFP permits special education funding for private school/CCS students who reside in the District and receive special education services from the District. The PSFP probably does not permit a CCS student to be concurrently enrolled in a local public school for purposes of foundation funding.

The District should explore the possibility of contracting with CCS for services whereby the District enrolls the homeschool student in the District and receives funding for the student while CCS provides materials and services to the students under contract with the District.

EXHIBIT A

LEGALITY OF POLICY ALLOWING STUDENTS
FROM LOCAL PRIVATE SCHOOLS TO ATTEND
DISTRICT CLASSES

To: Fred Stofflet
Executive Director, Curriculum & Assessment
Anchorage School District

From: Peter Partnow
Condon, Partnow & Sharrock

Date: January 24, 1992

Subject: Legality of Policy Allowing Students from Local
Private Schools to Attend District Classes

I. Question Presented:

Is it legally permissible for the Anchorage School District to open its classes to students who are enrolled on a full-time basis in local private sectarian schools?

II. Answer:

Allowing students from private sectarian schools to attend District classes would more likely than not violate the Alaska Constitution's prohibitions against providing direct benefits to private schools and providing public funds for non-public purposes. Such a policy would also probably violate the constitutional prohibition against the establishment of religion found in both the federal and state constitutions.¹

¹Even if the District could constitutionally open its programs to private school students not otherwise enrolled in District schools, there would appear no basis for concluding that the District would be required to permit participation of such students. Moreover, to the extent that any of the programs in which non-district students might wish to participate as regulated by the Alaska Schools Activities Association, it is likely eligibility requirements of the organization would also bar participation. Because your inquiry appears to be controlled by the basic constitutionality issues, we have not pursued extensive research or analysis relative to these other political issues.

Fred Stofflet
January 24, 1992
Page 2

III. Factual Background

It is our understanding that the District has been approached on behalf of one or more students who are enrolled on a full-time basis at private denominational schools. The student(s) desire to participate in District extra curricular program(s) because no comparable program(s) is offered at the private school(s). If admitted, each student would participate in the program(s) in the same manner as any other public school student. The student(s) in question are apparently residents of Anchorage who could attend Anchorage School District schools if not enrolled at private school. You have inquired whether permitting such student(s) to participate in District programs under these circumstances would be legally permissible.

IV. Discussion:

- A. Permitting students from private sectarian schools to participate in District programs probably violates the "direct benefits" and "public purposes" clauses of the Alaska Constitution.

The Alaska Constitution contains two provisions which prohibit the School District from establishing any policy which promotes sectarian influence in the schools. Under the "direct benefits clause," public funds cannot be used for the direct benefit of any religious or other private educational institution.²

²Article VII, Section 1 of the Alaska Constitution states:

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

(Emphasis added.) AS 14.03.090 also prohibits the advocacy of sectarian doctrines in the schools:

No partisan, sectarian, or denominational doctrines may be advocated in a public school during the hours the school is in session. No teacher or school board violating this section may receive public money.

Fred Stofflet
January 24, 1992
Page 3

A second provision of the state constitution prohibits the use of public money or property "except for a public purpose."³

These two constitutional prohibitions have been construed by the Alaska Supreme Court to invalidate laws or governmental policies which aid religion. In a case decided soon after statehood, the Alaska Supreme Court relied on these two clauses in a decision which invalidated a territorial statute providing for the free transportation of children to non-public schools. The court stated that free transportation did in fact "aid, encourage, sustain and support" the religious purpose of parochial education.⁴

More recently, the Alaska Supreme Court invalidated a tuition grant program for state residents attending private colleges in Alaska. The court determined that this program violated the Alaska Constitution because (1) it benefitted only private institutions, or those served by them, and was therefore not neutral; (2) the public funds expended under the program "constitute nothing less than a subsidy of the education received by the student at his or her private college"; (3) the magnitude of the benefits bestowed under the tuition grant program was quite substantial; and (4) although the tuition grants were nominally paid from the public treasury directly to the student, the student was merely a conduit for the transmission of state funds to private colleges. Sheldon Jackson College v. State, 599 P.2d 127 (Alaska 1979).

Applying the four part test articulated in Sheldon Jackson, it is more likely than not that a policy permitting students from private religious schools to participate in District programs would be found to violate the direct benefit and public purposes clauses of the Alaska Constitution. First, the class benefitted by permitting private school students to participate in District programs would be narrow--consisting of private school students and private schools. Second, public funds would be subsidizing the private schools. Third, the magnitude of the benefits could be substantial, depending upon how many private schools students elected to participate in District activities.

³ Alaska Const. art. IX, § 6 states:

No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose.

⁴Matthews v. Quinton, 362 P.2d 932, 941 (Alaska 1961)(quoting Everson v. Board of Education, 330 U.S. 1, 48 (1947)(Rutledge, J., dissenting)).

Fred Stofflet
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Page 4

Finally, while funds would not be paid directly to the private schools, there would certainly be the effect of subsidizing the private program at public expense.

It thus is likely that participation by private school students in District extra curricular programs if challenged, would be found to violate the direct benefits and public purposes clauses of the Alaska Constitution.

B. Allowing religious school students to participate in District programs would probably also violate the establishment clauses of the state and federal constitutions.

The federal and state constitutions prohibit the School District from implementing any policy which establishes religion, or prohibits the free exercise of religion.⁹ The prohibition against establishing religion, generally called the Establishment Clause, requires the School District to remain neutral with regard to religion, and to neither prefer one religion over another, nor advance all religion. Abington School District v. Schempp, 374 U.S. 203, 217-219 (1963). Whether governmental action violates the Establishment Clause is generally analyzed under the three part Lemon test, adapted from Lemon v. Kurtzman, 403 U.S. 602, 612-613 (1971). The Alaska Supreme Court has adopted the Lemon test for analyzing the issue under the Alaska Constitution. Bonjour v. Bonjour, 592 P.2d 1233 (Alaska 1979).

Under the Lemon test, the District's decision to allow a student from a private religious school to participate in District program would not violate the Establishment Clause of either the federal or state constitutions if (1) the policy has a secular purpose; (2) its principal or primary effect neither advances nor inhibits religion, and (3) the policy does not foster an excessive entanglement with religion. Id. The policy violates the

*More specifically, the United States Constitution states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

U.S. Const. Amend. I. The First Amendment is made applicable to the School District as a political subdivision of the State of Alaska by the Fourteenth Amendment. The Alaska Constitution broadly states, "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof." Alaska Const. art. I, §4.

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January 24, 1992
Page 5

Establishment Clause if it fails on any one of the three prongs of the Lemon test.

The United States Supreme Court considered a similar issue in Grand Rapids School District v. Ball, 105 S.Ct. 3216 (1985). In Grand Rapids, the school district adopted two programs that provided classes to non-public school students at public expense in classrooms located in and leased from the non-public schools. The first program, a "shared time" program, offered classes during the regular school day taught by full-time employees of the public schools. The second program, a "community education" program, offered classes at the end of the regular school day taught by part-time public school employees who for the most part were otherwise employed full time by the same non-public school in which their community education classes were held. Almost all of the private schools in the program, were religious schools. Students attending both programs were the same students who otherwise attended the particular school in which the classes were held.

Focusing largely on the second prong of the Lemon test, the Court held that both programs impermissibly "advanced religion" in three different ways: (1) the state-paid instructors, influenced by the pervasively sectarian nature of the religious schools in which they work, may intentionally or inadvertently indoctrinate the students in particular religious tenets or beliefs at public expense; (2) the programs threaten to convey a message of state support for religion to "impressionable youngsters" and to the general public; (3) the programs "in effect subsidize the religious functions of the parochial schools by taking over a substantial portion of their responsibility for teaching secular subjects." Id. at 3230.

The proponents of the shared time and community education programs argued that the subsidy effect of permitting public school teachers to teach courses to private religious school students was not significant enough to invalidate the program because the programs supplemented the curriculum with courses not previously offered in the religious schools and not required by state regulation. The Court rejected this argument, stating:

most important, petitioners' argument would permit the public schools gradually to take over the entire secular curriculum of the religious school, for the latter could surely discontinue existing courses so that they might be replaced a year or two later by a Community Education or Shared Time course with the same content. ... To let the genie out of the bottle in this case would be to permit

Fred Stofflet
January 24, 1992
Page 6

ever larger segments of the religious school curriculum to be turned over the [sic] public school system, thus violating the cardinal principle that the State may not in effect become the prime supporter of the religious school system.

Id.; see also Parents' Assoc. of P.S. 16 v. Quinones, 803 F.2d 1235 (2nd Cir. 1986) (federally funded remedial education program for female Hasidic Jews in public schools unlikely to pass "primary effect" test under Establishment Clause); Stark v. St. Cloud State University, 802 F.2d 1046 (8th Cir. 1986) (university policy which permitted students to fulfill student teaching requirement at parochial schools violated establishment clause).

The facts in Rapid City are distinguishable in some respects from the instant situation because in that case, the public school courses were taught on the site of the sectarian schools and by teachers otherwise employed by those schools. In the instant case, the request is simply for a sectarian school student to attend programs located at a public school and conducted by public school employees. However, the District would be similarly providing a subsidy to a sectarian school by permitting the private school students to attend programs not offered by the private school. Additionally, the District would undoubtedly face difficulties administering a program involving students of religious schools without fostering an excessive entanglement problem under the third prong of the Lemon test.

It is difficult to predict with any certainty how the question would be resolved by the United States Supreme Court since its composition has changed significantly since Rapid City was decided. Several of the more conservative members now on the Court have been critical of past decisions which broadly construed the Lemon test to invalidate programs benefitting religion. On the other hand, the Alaska Supreme Court has continued to adhere to the long line of federal cases consistent with Lemon which invalidate programs which appear in any way to directly benefit religion. See Green, "Freedom of Religion in Alaska: Interpreting the Alaska Constitution," 5 Alaska L.Rev. 237, 249-254 (1988). Thus, even with a change in the application of the federal constitution by the U.S. Supreme Court, it remains likely that the Alaska Supreme Court would invalidate a policy allowing students from sectarian schools to participate in public school programs.

V. Conclusion:

For the above reasons, any policy permitting students enrolled in private religious schools to participate in District

Fred Stofflet
January 24, 1992
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programs would more likely than not be found unconstitutional under the direct benefits and public purposes clauses of the Alaska Constitution. It is also likely that such a policy would be found to advance religion in violation of the prohibition against the establishment of religion found in the state constitution. If previously established precedent were adhered to, this type of policy will also likely be found to violate the Establishment Clause of the federal constitution.

cc: Dr. Thomas O'Rourke, Superintendent of Schools

EXHIBIT B

TRANSPORTING PRIVATE SCHOOL STUDENTS

SEP 09 09 09:08

P.33

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF EDUCATION OFFICE OF THE COMMISSIONER

GOLOBELT PLACE
801 WEST 10TH STREET, SUITE 803
ANCHORAGE, ALASKA 99501-1084

NUMBERED MEMORANDUM 94-02

TO: All School Superintendents

FROM: *[Signature]* Commissioner of Education

DATE: August 20, 1993

SUBJECT: Transporting Private School Students

This memorandum is to inform you that the Department has disapproved the transportation of nonpublic school children on all bus routes operated by school districts.

The Department of Law has advised this department that AS 14.09.020, authorizing transportation of nonpublic school students at public expense, is unconstitutional. They rely on Matthews v. Ointon, a 1961 Alaska Supreme Court decision holding that a nearly identical statute violated the Alaska Constitution because "the furnishing of such transportation at public expense constitutes a direct benefit to the (private) school." As a 1975 Attorney General Opinion explained, "until our Supreme Court issues a decision overruling Matthews or modifying it in a significant manner, the law in the state is that public funds may not be used to provide transportation to private school children."

We understand that students in the Fairbanks area may appeal this decision to the superior court. However, unless a court orders that the status quo be maintained during the pendency of judicial determination of this issue, all districts should cease providing transportation to private school students. This applies to private students transported on dedicated private school bus routes as well as private school students transported as passengers on public school bus routes. If this directive has an impact on your district, please submit a revised schedule of pupil transportation route alignments and vehicle needs for determination of your district's EX-76 funding level.

This department will keep you informed of any significant developments. Please contact Duane Gwiley, Director of School Finance, at 465-8679 if you have any questions.

06-12-93

20

FAX NO. 4835278

DEPT. ED. SCHOOL FINANCE

AUG-23-93 MON 7:44

EXHIBIT B PAGE 1 of 1

EXHIBIT C
BLOMFIELD CASE

SENT BY Xerox Telecopier 7021 : 9-21-93 : 3:59PM :

82-

9072692318: 2



ALASKA SCHOOL ACTIVITIES ASSOCIATION, INC.

September 21, 1993

TO: Board of Control

FROM: Gary Matthews

A handwritten signature in black ink, appearing to read 'Gary Matthews', is written over the 'FROM' line.

RE: Blomfield Case

Harry Gamble notified me today that the Commissioner is going to make an announcement today that recommends changing ASAA Bylaws to permit a private/home school student to participate on a school team where he is not enrolled as long as the student lives in the member school's attendance area.

EXHIBIT D

SERVICES TO PRIVATE SCHOOLS AND PRIVATE
SCHOOL STUDENTS

MEMORANDUM.

State of Alaska
Department of Law

Darby L. Anderson, Superintendent
Centralized Correspondence School

DATE March 18, 1993

Thru: The Honorable Jerry Covey
Commissioner
Department of Education

FILE NO 663-93-0179

TEL. NO 465-3603

SUBJECT Services to private
schools and private
school students

FROM

Janice Gregg Levy
Janice Gregg Levy
Assistant Attorney General
Human Services Section-Juneau

You have asked whether the Central Correspondence School (CCS) can provide services to private schools. As I understand your request, you would like to know whether you can contract with a private school to offer correspondence courses, and whether you can enroll private school students in the CCS. Although your questions arose in the context of an individual incident, you are asking for a legal opinion to serve as a basis for either continuing the existing guidelines, or developing new policy.

The short answer is that we believe it is beyond the department's scope of authority to contract with private schools to provide educational services. Even if the legislature broadened the department's authority, CCS would have to charge a fair price to avoid providing a direct benefit to a private school in violation of the state constitution, and might be subject to a charge of excessive government entanglement in religion if the private school was sectarian. On the other hand, private school students themselves should probably be permitted to enroll in CCS subject to the same admission requirements as any other student. While the enrollment could give rise to a "direct benefit" challenge, current case law suggests that the challenge would not succeed because the benefit to the school probably would not be of substantial magnitude.

FACTUAL BACKGROUND

One of the duties of the Department of Education is to provide correspondence study programs through a centralized office, AS 14.07.020(a)(9), and it has done so by establishing the CCS. Most CCS students enroll because they do not live near a public school, because they are traveling, or because they choose the CCS over their local public school. The department is also authorized to contract with school districts to provide educational services where that is more efficient or economical than the district providing the service itself. AS 14.07.030(7). Thus, CCS functions in two ways: as a direct provider of education to

EXHIBIT D PAGE 1 of 9

students enrolled in its program, and as a contractor, providing services to a school district.

The principal of Abbott Loop Christian School, a private Anchorage school, called the CCS in August 1992 to contract for services to provide a biology course to a senior in their school. The CCS responded that it is their policy to sell services and materials only to public schools. The following day the counselor from the school called to enroll the student in the CCS, noting that the enrollment policy of CCS is to enroll students that have no other educational alternative. The CCS did not enroll the student. It was not clear from CCS's memo to our department if this decision was based on CCS's belief that the student did, in fact, have an educational alternative and therefore was not eligible, or was based on the fact that the student was enrolled in a private school, or both.¹

The following analysis sets out the extent to which we believe the Alaska statutes and the state and federal constitutions permit CCS to provide services to private schools and private school students.

LEGAL ANALYSIS

I. CONTRACTING DIRECTLY WITH PRIVATE SCHOOLS

AS 14.07.030(7) provides that the department may contract with school districts to provide services. There is no express authority for the department to contract with private schools, and we believe that the current CCS policy of contracting only with school districts is both defensible and advisable. A departure from this policy could leave the department open to a challenge that it is acting outside the scope of its legislative authority, that it is providing a direct benefit to a private educational institution in violation of the Alaska Constitution, and, if the school is a religious school, that the contracting results in excessive government entanglement in religion in violation of the state and federal constitutions.

A. Scope of Legislative Authority

A 1983 attorney general memorandum advised the Department of Education that it could market certain instructional materials

¹ Page seven of the CCS Handbook lists "no other educational alternative" as one of the criteria to be considered in determining whether a request for late enrollment should be approved. It is not a requirement for enrollment in CCS.

to the general public.² It noted that the statutes authorize "the sale or other disposition of abandoned or obsolete buildings and other state-owned school property," AS 14.07.030(4), and permit the department to "acquire and transfer personal property." AS 14.07.030(6). These statutory grants were considered broad enough to permit the sale of the materials. Thus, if the department is merely a vendor of goods, selling a curriculum, the sale is probably permissible. The price of the goods would have to be calculated so as not to create a direct benefit to the private school, however, as described in section B below.

The statutory grants cited are probably not broad enough, however, to encompass contracting with private schools to provide educational services. Providing services goes beyond the plain language of either selling state-owned school property or transferring personal property, and suggests more than a simple buy-sell transaction. This view is strengthened by the legislature's express authorization for the department to contract with school districts to provide services. AS 14.07.030(7). If the authority already existed, this section would be unnecessary. It is our opinion that contracting with private schools goes beyond the scope of authority granted by the legislature to the department, and that the CCS policy of contracting only with school districts should not be disturbed.

Scope of authority is sufficient reason by itself for the department to adhere to its existing policy. Because you expressed an interest in knowing what issues would be relevant if CCS contracted with private schools, I am also including a discussion of two constitutional arguments that could be raised.

B. Direct Benefit to Private Educational Institutions

"No money shall be paid from public funds for the direct benefit of any religious or other private educational institution." Alaska Const. art. VII, § 1. If CCS sells a product to a private school, or if the legislature does authorize the department to contract with private schools to provide services, the department must be sure that it does not provide the service at a state-subsidized price. If the department absorbs some of the costs of developing the product or providing the service, the value absorbed could be seen as a direct benefit to a private educational institution in violation of the state constitution. A "direct benefit" analysis, see infra section II.C., would then be employed to determine whether there was a violation. To avoid the

² 1983 Inf. Op. Att'y Gen. (June 17; 663-83-0651).

challenge, the department should fairly calculate all costs involved and charge the private school accordingly.

C. Government Entanglement with Religion

If the department's authority is seen to extend to contracting with private schools, or if the legislature authorizes such transactions, it is likely that some of the private schools seeking CCS services will be religious schools. Indeed, the inquiry giving rise to this memo was made by a Christian school desiring to contract with CCS. Government involvement with religious institutions raises additional concerns under both the state and federal constitutions.

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

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

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

Contracting to provide educational services to a religious school would probably pass the first two prongs of the test. The purpose would be a secular one--that of selling state educational services to interested schools. The primary effect would neither advance nor inhibit religion. The courses would be unrelated to any religious instruction provided by the school.

There is some danger, however, that the contracting would result in excessive government entanglement with religion, failing

the third prong of the test and rendering the practice unconstitutional. The question is one of degree. At one end of the spectrum, the mere sale of materials does not raise excessive entanglement concerns. At the other end, if in contracting with a school the department evaluates program needs, develops a program to meet those needs, and is involved in the implementation and evaluation of the program, there is significant state involvement in the delivery of education in a religious school. It is our opinion that contracting with a private school to provide educational services gives rise to a very real danger of excessive government entanglement in religion.

In light of this danger, the current scope of legislative authority, and the need to avoid a "direct benefit" to private schools, it is our view that CCS should adhere to its existing policy of contracting only with public school districts to provide services.

II. ENROLLING PRIVATE SCHOOL STUDENTS

CCS declined to enroll the Abbott Christian School student in a CCS biology course apparently because he was enrolled in another school and because he did not meet other eligibility requirements. These reasons, as well as a constitutional argument that enrollment would result in a direct benefit to a private school, are addressed below.

A. Concurrent Enrollment in CCS and a Private School

Existing CCS policy is to enroll students who apply in a timely fashion and who meet the requirements set out in the CCS Handbook. The handbook states that "[s]tudents may not be enrolled in the regular public school and CCS at the same time." CCS Handbook, pp. 6, 8. It also states "[s]tudents may not be enrolled in CCS and their local school at the same time." CCS Handbook, p. 7. CCS has apparently construed this rule to prohibit a private school student from enrolling in CCS. This is probably too strict an interpretation of the handbook rule.

There is no indication that this rule was meant to encompass anything other than public school enrollment. The materials suggest and you have confirmed that the sole purpose of the rule is to avoid students being counted twice for purposes of calculating foundation aid based on average daily membership. The same concern is evident in the state regulations, which provide that if a student drops out of CCS and then enrolls in the local school district the same year, the district cannot count that student in its average daily membership. 4 AAC 33.030(c). No

other purpose for the prohibition against concurrent enrollment has been suggested.

The issue of double counting is not raised when a private school student enrolls in CCS. Such a student would generate funds through the foundation formula for CCS, but would not be counted in any public school district. Thus, the rule prohibiting concurrent enrollment in a public school and CCS should not be extended to prohibit private school students from enrolling in CCS. This is not an unequal application of the rule. The private school student, like the public school student, may not be enrolled in a public school and CCS at the same time.

B. Other Eligibility Requirements for CCS Enrollment

There may, however, be other reasons not to enroll a private school student. You have stated that students must enroll on at least a half-time basis, and the student who prompted this inquiry sought to enroll in one course only--biology. CCS was justified in denying enrollment to this student if it was uniformly applying a policy of minimal half-time enrollment.

You have informed me that half-time enrollment for high school students consists of taking two courses. Some private school students may be willing to enroll in two courses to meet CCS requirements, enabling them to take courses from CCS not offered by their private school. Our opinion is that such students should not be denied enrollment if they otherwise qualify. Their work should be evaluated by the CCS teachers in the same manner as any other CCS student; the private school administration and teachers should not be involved at all. Despite a possible "direct benefit" challenge as discussed below, we believe that in most instances a private school student's part-time enrollment in CCS does not offend the constitution. Private school students must, of course, meet other requirements that apply to CCS students, including timely application.

C. CCS Enrollment of Private School Students as a Direct Benefit to a Private Educational Institution

An argument could be made that if private school students are permitted to enroll in CCS, the school is relieved of the responsibility and expense of teaching those courses CCS provides. This practice could be seen as constituting payments from public funds made "for the direct benefit of [a] religious or other private educational institution" in violation of Alaska Constitution, article VII, section 1. When a service or expenditure provides a benefit to a school, the inquiry must focus

on whether the benefit is a "direct" benefit, prohibited by the constitution, or an "indirect" benefit that may be permitted.³

In Sheldon Jackson College v. State, 599 P.2d 127 (Alaska 1979), the supreme court set out a three-prong test for whether a benefit is a "direct benefit" in violation of the constitution: (1) Is the benefit applied with neutrality and without regard to status or affiliation? (2) What is the nature of the use of the funds? (3) What is the magnitude of the benefit conferred? Id. at 130.⁴

Applying the first question to enrollment in CCS by private school students, the benefit appears to be applied with neutrality. The CCS policy is applied without regard to the religious affiliation or lack of affiliation of a student's school, and the incidental benefit accrues to schools on a similarly neutral basis.

The nature of the use of the funds does not suggest a direct benefit. The funds are used to educate students not otherwise enrolled in public education. The fact that the funds are spent directly on students, however, does not preclude a finding that the school receives a direct benefit. A private school benefits by not having to provide the courses CCS offers, but only if it would in fact have provided them if CCS did not. A private school also benefits if a student would have withdrawn from the private school but for the availability of CCS part-time

³ The Alaska Constitutional Convention minutes reflect that the delegates expressly rejected language that would have prohibited both direct and indirect benefits. Thus, for example, although fire protection of a private school is clearly a benefit to the school paid from public funds, it is not prohibited by the constitution. For a discussion of the minutes relating to this issue, see Sheldon Jackson College v. State, 599 P.2d 127, 129 (Alaska 1979).

⁴ In 1961, the Alaska Supreme Court held that transporting private school students on public school buses violated the constitution by directly benefiting private schools with public funds. Matthews v. Quinton, 362 P.2d 932 (Alaska 1961), cert. denied, 368 U.S. 517, 82 S. Ct. 530, 7 J. Ed. 2d 522 (1969). The court rejected the argument that the transportation was of direct benefit to the child only. Id. at 940-41. While not overruling Matthews, the Sheldon Jackson court suggested the case would be decided differently under the new test it adopted. Sheldon Jackson at 130 n.20. Consequently, we have not relied on the Matthews analysis of direct benefits.

enrollment. Notwithstanding these possible benefits, the nature of the use of the funds, taken alone, does not give rise to a constitutional violation. The funds are used to educate students through a state program not associated with a private school. Whether that use results in an impermissible benefit will probably turn on an examination of question three.

Prong three of the analysis asks what the magnitude of the benefit is. "A trivial, though direct, benefit may not rise to the level of a constitutional violation, whereas a substantial, though arguably indirect, benefit may." Id. If a few students throughout the state elect to enroll half-time in CCS while continuing enrollment in their private school, the benefit to the private school is probably both indirect and slight.

A different question is raised if a private school eliminated certain subjects from their curriculum, and directed their students to enroll half-time in CCS to take those courses. The appearance and substantive effect would be that CCS, with state dollars, was providing the curriculum and teaching for a private school. Such a result goes to the core of the prohibition against payment of public funds directly benefitting private educational institutions. The fact that procedurally the students would be enrolled individually through CCS, not through their school, would probably not save the arrangement. "[M]erely channeling the funds through an intermediary will not save an otherwise improper expenditure of public monies." Id.

It is unlikely that a private school would desire to abandon a large portion of its curriculum to the state. Indeed, private schools service families who seek an alternative to their local school district or the state correspondence program. But the example illustrates that what is constitutionally permissible on a case-by-case basis might result in a prohibited direct benefit if engaged in on a large scale. Thus, unless the benefit to a private school approaches a substantial magnitude, CCS should enroll private school students who are otherwise eligible for the program.

CONCLUSION

The existing CCS policy of contracting only with public school districts to provide educational services is based on a fair interpretation of the department's statutory authority and does not subject the department to statutory or constitutional challenges. Additionally, the department would probably be safe acting as a vendor by selling an educational product to private schools, so long as CCS did not subsidize the cost.

Darby L. Anderson, Superintendent
Centralized Correspondence School
663-93-0179

March 18, 1993
Page 9

Enrollment in a private school should not preclude a student from enrollment in CCS, but the student must meet other admission requirements, including any minimum enrollment status. If CCS suspects that a private school is encouraging enrollment in CCS on a widespread basis to meet what would otherwise be the school's teaching responsibilities, the department should reassess its enrollment guidelines to avoid any constitutional violations. Absent such an occurrence, the enrollment of private school students in CCS raises no constitutional concerns.

I hope this provides you with sufficient background and analysis to evaluate existing CCS policy regarding private schools and private school students. If I can be of further assistance, please do not hesitate to contact me.

JGL:ae:bap

EXHIBIT D PAGE 9 of 9

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

Darby L. Anderson, Superintendent
Centralized Correspondence School
663-93-0179

March 18, 1993
Page 9

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I hope this provides you with sufficient background and analysis to evaluate existing CCS policy regarding private schools and private school students. If I can be of further assistance, please do not hesitate to contact me.

JGL:ae:bap

EXHIBIT D PAGE 9 of 9

ITEM B

DEPARTMENT OF EDUCATION AGENDA AND
REGULATIONS
DATED OCTOBER 13, 1993

**TENTATIVE AGENDA
ALASKA STATE BOARD OF EDUCATION**

**October 27-30, 1993
Fort Yukon - Arctic Village - Fairbanks**

RECEPTION
6:30 p.m., Fort Yukon Elementary School Cafeteria

PUBLIC FORUM
8:30-9:30 p.m., Fort Yukon Gymnasium

BOARD MEETING
Thursday, October 28
Elementary School Board Room, Fort Yukon
8 a.m.

- 1. Meeting with Yukon Flats School Board
8 a.m.
- 2. Call to Order & Roll Call Patricia Norheim
9 a.m.
- 3. Commissioner's Report Jerry Covey
- 4. Participation in Public School Activities and Programs
11 a.m.
- 5. Public Comments
Comments are limited to 3 minutes
per person and 5 minutes per group.

LUNCHE
11:30 a.m. to noon, cafeteria

FLIGHT TO ARCTIC VILLAGE
noon to 1 p.m.

- 6. School and Village tour
- 7. Discussions Arctic Village Council
Venetie Tribal Council
local advisory committee