

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10170 ADMINISTRATIVE REGULATION REVIEW

15



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William J. Carter

Signature of Camera Operator

10/14/2003

Date

3-01-02

SPEC.

SCHOOLS,

CORRE-

Spond.

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Sen. Robin Taylor, Vice-Chair
Sen. Lyda Green
Sen. Georgianna Lincoln
Rep. Jeannette James
Rep. Joe Hayes



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Anchorage, AK 99501
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Administrative Regulation Review Committee

Memo

TO: Rep. McGuire

FM: Jim Pound

Date: February 8, 2002

RE: 04 AAC 33. Special Schools

There are several concerns that you have asked me to look into regarding the proposed regulations governing special/correspondence schools.

These regulations clearly overstep the bounds of authority of the central board. They are designed to micro-manage new programs and do not provide a grandfather clause. Additionally, they broadly interpret the Establishment Clause.

4 AAC 33.420 requires a district wishing to create a correspondence study program to first apply and receive written approval from the Department. This is in conflict with **AS 14.07.20 General Duties of the Department (1) exercise general supervision over the public schools of the state. And (3) provide advisory and consultative services to all public school governing bodies.**

The religious controversy comes up in **04 AAC 33.421**- It too oversteps the bounds in paragraph (c) specifying curriculum materials that comply with AS 14.30.90.

The parent must now sign an agreement that allows the Department to dictate what the parent will or will not teach.

AS 14.03.90 Partisan, sectarian, or denominational doctrines prohibited.

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

This statute is more than likely not a legal. In researching court decisions there are at least two U.S. Supreme Court decisions, Board of Education v. Allen, 392 U.S. 236 (1968) and Witters v. Wash. Dept. of Services For the Blind, 474 U.S. 481 (1986). Both of these cases refer to religion and the use of state funds. The first is a New York case in which state statute required the state to provide free books for students to use in grades 7-12. That statute applied to parochial schools as well as public ones. The court ruled that those funds did not violate the Establishment Clause because the books were used for the betterment of the student and that the books purchased were ultimately property of the state. The proposed regs. **Paragraph (h)(2)** requires that material be returned to the state after usage. Therefore BOE v. Allen applies. The ruling also puts into question **Paragraph (h)(3)** where the state refuses to pay for religious material.

In the second case Witters v. Wash., A blind individual was denied vocational rehab funds because he wished to attend a Christian College. The court ruled that because the money was given directly to Witters who in turn handed it to the college that again the Establishment Clause had not been violated. Paragraph (h) appears to violate this ruling because **...program may provide a fund account to parents for the purpose of meeting instructional expenses....**

Further in this area, curriculum, which falls into two areas: The End Result i.e. Graduation and How you get there.

Current Reg. and Statute

4 AAC 04.020. SKILLS FOR GRADUATING STUDENTS

A goal of the state public school system is to graduate students who will

(1) communicate effectively; (2) think logically and critically; (3) discover and nurture their own creative talents; (4) master essential vocational and technological skills; (5) be responsible citizens; (6) be committed to their own health and fitness; and (7) accept personal responsibility for sustaining themselves economically.

A goal of the state public school system is to provide a working knowledge of

(1) English; (2) mathematics; (3) science; (4) geography; (5) history; (6) skills for a healthy life; (7) government and citizenship; (8) fine arts; (9) technology; and (10) world languages.

4 AAC 05.080. SCHOOL CURRICULUM AND PERSONNEL

(a) The curriculum of a local school may be supplemented through the use of correspondence course materials approved by the commissioner. This use is not grounds for shortening the day in session, as prescribed by AS 14.03.040 , for any student.

(b) The governing body of a district shall comply with the statutes and regulations of the state in providing the educational program described in the plan developed under 4 AAC 05.070(a) .

The Proposal has left curriculum somewhat open, however there is language that through the purse strings places strict requirements on the local departments.

Under the enrollment requirements the regulations appear to violate the Departments statutes.

Current

AS 14.17.430. State funding for correspondence study.

Except as provided in AS 14.17.400 (b), funding for the state centralized correspondence study program or a district correspondence program, including a district that offers a statewide correspondence study program, includes an allocation from the public school account in an amount calculated by multiplying the ADM of the correspondence program by 80 percent.

Proposed

04 AAC 33.430 (h) A student may not be counted as a total of more than 1.0 full-time equivalent for state funding purposes. If a student is enrolled in both the student's district of residence and in a statewide correspondence program of another district, the district of residence shall count the student first under the provisions of 4 AAC 09.040(c) , based solely upon the student's enrollment in classes of the district of residence. Any remaining student count may be allocated to the enrolling district based on the student's enrollment in classes of the statewide.

Another point that could be of concern is the requirement that each District provide a social security number for Students.

Now on to something we could probably have some fun with. While I am sure we really can't there is a requirement on the books regarding education regulations.

AS 14.07.020 (6) accredit those public schools that meet accreditation standards prescribed by regulation by the department; these regulations shall be adopted by the department and presented to the legislature during the first 10 days of any regular session, and become effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house;

Just a thought.

Have a good week-end

Jim



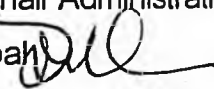
CyberLynx Correspondence Program

Nenana CyberLynx Correspondence School
P.O. Box 599
Nenana, Alaska 99760
Telephone: 907.832.1070 Fax: 907.832.5468

"Providing Professional Educational Support for Home School Parents"

RECEIVED
JAN 11 2002

Ans'd.....

To: Senator Robin Taylor, Chair Administrative Regulation Review Committee
From: Thomas Klever, Principal 
cc: Dr. Ken Eggleston, Acting Superintendent
Date: December 27, 2001
Re: Proposed Regulation Changes Statewide Correspondence Programs

I send this information to you for your information. The Alaska Department of Education is requiring our program to submit to an application with requirements tied to regulatory changes that have yet to be approved and/or adopted?

The State Board of Education proposes to adopt regulation changes in the Alaska Administrative Code that will directly impact statewide correspondence programs in a profound fashion. It appears that the Alaska Department of Education has decided to circumvent the regulatory process and by doing so has placed unapproved language into the SY2003 Statewide Correspondence School Application. The department circulated their statewide application on December 4, 2001 with a due date of January 31, 2002. The proposed regulations were presented at the regular session of the State Board of Education on November 27. This opened a period public comment that will end on March 28, 2002. The Department of Education assumes that their regulatory changes will be approved as they are presently written. I feel that what they have done mocks what seems to me to be a very good process. Please let me know who or where I can go to get this dilemma worked out.

Thank you so much for your attention to this concern.

Attachments

Notice to Districts Application
Deadline

Application 1/3

STATE OF ALASKA

Department of Education & Early Development

TONY KNOWLES, GOVERNOR

Goldbell Place
801 West 10th Street, Suite 200
Juneau, Alaska 99801-1894
(907) 465-8727
(907) 465-6760 Fax
Barbara_Thompson@eed.state.ak.us

Teaching & Learning Support

FAXED
DEC 12 2001
BY: *JA*

To: Superintendents

RECEIVED
Nenana

DEC 11 2001

From: Barbara Thompson, Deputy Director *Bat*

Date: December 4, 2001

CyberLynx Office

Subject: FY2003 Statewide Correspondence Program Application

FAXED
DEC 14 2001
BY: *JA*

School districts intending to operate a correspondence program to students outside their district boundaries in school year 2002-2003 must submit an application to the Alaska Department of Education & Early Development by January 31, 2002 that includes the information below in items 1-14.

Applications will not be accepted after the January 31, 2002 due date.

1. School district and statewide correspondence program names.
2. The expected enrollment, the number of certified staff and FTE, the number of support staff and FTE.
3. Evidence documenting that the program conforms with statewide goals and performance standards, as set out in 4 AAC 04.010-200.
4. Evidence documenting that the program is using, or will use, curriculum materials, including textbooks and other instructional aids that: a) have been reviewed and selected by the district school board; b) are of the same quality offered by the district in its other programs; and c) are in compliance with AS 14.18.060 and AS 14.03.090. Documentation that clearly explains how the curricula review occurred, which curricula are used in district programs and how the program is in compliance with AS 14.18.060 and AS 14.03.090 must be submitted.
5. Evidence documenting that the statewide correspondence program staff, including certified teachers, have not or shall not provide instruction using religious, partisan, sectarian, or denominational curricula and materials purchased privately by the parent, guardian of the students, or by the student if the curricula or materials teach particular religious beliefs, or a particular religion, as true. The process that is in place for guaranteeing this provision must be submitted.
6. Evidence documenting that the program includes an assessment plan of the same quality as an assessment plan that the district offers in the district's other programs is in place to ensure the academic progress of enrolled students. Documentation submitted must address a) monitoring of the enrolled student by a certified teacher, including at least monthly review of the student's work and documentation of the

FAXED
DEC 27 2001
BY: *AM*

certified teacher's review; (b) grades that are determined and assigned by a certified teacher after review and consideration of any recommendations submitted by the student and parents; and (c) a report card that denotes curricula material origin for any course other than a district developed course.

7. Evidence documenting that the district requires all enrolled correspondence students participate in state required assessments. Documentation with regard to this item must (a) show how program staff inform parents of the state testing requirements and the consequences of non-compliance; (b) demonstrate how a secure testing facility is provided, in compliance with 4 AAC 06.765, to administer all state required assessments – or how the district has entered into agreements with local school districts and site-based schools to allow statewide correspondence program students to participate in state required testing; and (3) that the program will have data available documenting participation rates of statewide correspondence students in state required assessments.
8. Evidence documenting that a certified teacher or staff member, trained in test security, will administer the High school Graduation Qualifying Examination.
9. Evidence documenting that the district intends to apply the same state achievement measures to correspondence students as the district applies to students enrolled in other district programs.
10. A copy of the plan for receiving parental advice and involvement in planning, development and evaluation of the correspondence study program, including the selection and evaluation of curriculum, teachers and administrators. The plan must also include a process for securing a signed agreement between the statewide correspondence study certified teacher and the parent, or parents, of each student. The agreement (a) must verify that curriculum materials and course of study are aligned to state standards and comply with AS 14.03.090 and appropriate for the student; and (b) document the process used to ensure curriculum materials are aligned to state standards and comply with AS 14.03.090, including a certified teacher review of all curriculum materials for each student.
11. A copy of the program's policies and procedures if the program provides a fund account to parents for the purpose of meeting instructional expenses for the child enrolled in the program. Areas that must be address in the fund account policies and procedures include (a) ensuring that expenditures from the fund account is used only for the student's instructional needs; (b) materials purchased with state funding are property of the program and that non consumable materials must be returned to the program when the student exits the program for any reason; (c) religious, partisan, sectarian, or denominational materials may not be purchased with account funds; (d) written guidance on what constitutes appropriate and allowable expenditures of the fund account; (e) a process detailing how all expenditures from the fund account must be approved by the certified teacher signing the student's plan; and (f) that the fund account may not be used either by the district or the parent to supplant district funds or obligations for IEP services.
12. A copy of the plan, specific to the statewide correspondence program, to identify and locate all children with disabilities for the purpose of establishing needs for special education and related services (Child Find).
13. For each special education student enrolled in the correspondence program, a plan of service must be provided to the student. The program must provide evidence

documenting how these student plans will be created and implemented and include (a) the identification of the members of the IEP team from each district in which the student is enrolled, if applicable under 4 AAC 52.140; (b) a description of the manner in which each teacher who works with the student in the enrolling district will participate as a member of the IEP team for each student; and (c) identification of each student in a manner that complies with the confidentiality requirements of 4 AAC 52.220.

14. List the steps the correspondence program will take to ensure that a signed cooperative agreement with the student's district of residence is in place prior to enrolling a student who is eligible for special education and/or related services. An individual cooperative agreement is required with the district of residence if the student is enrolling at less than 100 percent full-time-equivalent count. Students for whom the statewide correspondence program will provide a portion or all of the special education and related services to the student may provide the services to the student prior to the individualized cooperative agreement being finalized.

The department will review district applications to:

1. Ensure that the applications are in compliance with state statute and regulation.
2. Issue written approval or disapproval by March 31, 2002, for the operation of statewide correspondence study programs, if any and all negotiations are completed in a timely fashion, based on the district's responsiveness to submitting additional information.

Please submit the application, due on January 31, 2002, to:

Barbara Thompson, Deputy Director
Department of Education & Early Development
Division of Teaching and Learning Support
801 West Tenth Street, Suite 200
Juneau, Alaska 99801

If you have any questions, please call me at (907) 465-8727 or contact me at Barbara_Thompson@eed.state.ak.us.

Ms. Susanne D Badilla

Juneau AK,

SUBJECT: EDUCATION

MESSAGE: R.E. Proposed changes by the Department of Education to the regulations governing the statewide correspondence programs. I am a homeschooling parent with the IDEA program. The program (as is) is proving to be a good educational choice for many families. Please support a rewrite with more input from the correspondence programs and the homeschool families.

Mrs. Lori J Stenberg

Douglas, AK

SUBJECT: EDUCATION

MESSAGE: Dear Legislators I am concerned about proposed regulation changes by the Board of Education regarding Statewide Correspondence Programs. We appreciate the support and guidance of the IDEA program. Success is validated by test scores seen on the DOE's website. The new regs over-regulate and restrict freedom for private religious curriculum. Help.

Mrs. Betty M Phillips

Fairbanks AK

SUBJECT: EDUCATION

MESSAGE: Reg. 4 AAC 33.420-.490 Statewide Correspondence Programs are burdensome and unnecessary. We already abide by law take state tests submit learning plans and progress reports. Our results are also outstanding.

Mrs. Shirley M Johnsrud

Soldotna AK,

SUBJECT: EDUCATION

MESSAGE: Dear Legislatures; My comments address the regulations proposed for correspondence programs. After 30 years teaching and counseling the best teacher our children can have is the parent. Homeschoolers win State contests and have strong family values. Compare the cost of one homeschooler to one student flying to play one ball game. Thank you.

Mrs. Helen F Buckwalter

Homer AK,

SUBJECT: EDUCATION

MESSAGE: I am very concerned about the newest proposals from the DEED that regulate statewide correspondence programs in Alaska. IDEA is an excellent program which my son has been enrolled in from its beginning and should not be stymied by unnecessary and overly intrusive rules. Please do not approve these regulations as currently written.

Linda E Sisson

Soldotna AK

SUBJECT: EDUCATION

MESSAGE: The proposed regulations by D.E.E.D. regarding restrictions on the use of privately purchased curricular material[4AAC33.421(d) 4AAC33.421(e)(1)and 4AAC33.421(g)(2)] NEED TO BE RE-WRITTEN! We have a constitutional right to use Christian curriculum purchased with private funds. This regulation would prohibit this freedom.

Jeffrey A Sisson

Soldotna AK,

SUBJECT: EDUCATION

MESSAGE: I oppose the D.E.E.D proposed regulations affecting homeschooling in Alaska.

These regulations if allowed to pass would devastate I.D.E.A. and other homeschooling programs in Alaska. THESE REGULATIONS NEED TO BE RECONSIDERED.

Homeschooling is a wonderful alternative educational system and it would be too bad to loose it.

Mr. Michael D Dammeyer

Wasilla AK

SUBJECT: EDUCATION

MESSAGE: Thank you for your support of homeschooling legislation. It is appreciated.

However these excellent laws are being radically manipulated by the Department of Education and Early Development (DEED) to destroy popular homeschooling correspondence programs like IDEA. Please consider legislation stopping DEED from manipulating statutes we work so hard to pass.

Ms. Cheryl Chelsea Cowan

Homer AK,

SUBJECT: EDUCATION

MESSAGE: Please consider that existing and proposed regulations regarding statewide correspondence programs are unfairly biased against statewide programs as opposed to districtwide programs. Statewide programs have to apply annually whereas charter schools only apply per ten years and districtwide do not need to apply at all. Thank-you

Ms. Justine B Emerson

Juneau AK

SUBJECT: EDUCATION

MESSAGE: The proposed changes in DEED regulations concerning Statewide Correspondence Programs if approved as written will greatly restrict the ability to responsibly educate children at home. Please encourage the State Board of Education to rewrite these (4 AAC 33.421) to protect and not diminish the freedom we have to home school in Alaska.

Ms. Cheryl Chelsea Cowan

Homer AK

SUBJECT: EDUCATION

MESSAGE: Please do not support proposed regulations regarding statewide correspondence study programs. The proposed regulations will siphon money away from my childrens' education. 4AAC 33.421 and 4 AAC 33.421 proposals mandate monthly meetings with a contact teacher. We already have teacher oversight in place. Monthly meetings will siphon money away from student allotments.

Mrs. Farrah K Collver

Soldotna AK,

SUBJECT: EDUCATION

MESSAGE: The proposed regulations affecting homeschooling in Alaska will not only greatly restrict the ability of parents to responsibly educate their children but they will also infringe on our personal rights. They make correspondence programs cumbersome inefficient and ineffective. They should not be approved as written.

Mr. Brett J Collver

Soldotna AK

SUBJECT: EDUCATION

MESSAGE: The regulations effecting homeschooling in Alaska should not be approved as written. They will restrict the ability of homeschooling parents to tailor education for their children and inflict unnecessary and unfair burdens on the correspondence programs. This will greatly hinder the programs as well as parents in educating children.

John M Rathbun

Fairbanks AK,

SUBJECT: REGULATIONS

MESSAGE: Constitutional liberties are under attack. Revisions to 4AAC.33.420 Chapter 33 will effectively destroy private and home schools by removing the reason for their existence. If congress shall make no law establishing religion or free exercise thereof then why should we allow any lesser government authority to do so. Please help keep home and private schools independent.

Cheryl K Beckley

North Pole AK,

SUBJECT: REGULATIONS

MESSAGE: I am concerned about the proposed regulations affecting home schooling in Alaska. The main regulation I must protest is 4AAC 334.31 (d)(e)(g). Together these will eliminate my choice to use a faith based curriculum. I ask you to help see that these regulations are not approved as presently written.

Ann C Ward

Salcha AK

SUBJECT: REGULATIONS

MESSAGE: Please do not approve the proposed regulations for state correspondence programs. These proposals would create unnecessary bureaucracy. Parents and correspondence teachers would spend more time with DEED paperwork and less time educating children.

Harry A Eaton

Nikiski AK,

SUBJECT: REGULATIONS

MESSAGE: Please disapprove proposed changes to 4AAC 33.420-.490 Statewide Correspondence Programs. I am offended by the proposed reduction in my freedom. The proposed changes do not add value nor prove to be cost/benefit justified. The changes do no clarify the regulations but only add burdensome details to program staff and parents.

James D Frey Sr

Gakona AK

SUBJECT: REGULATIONS

MESSAGE: I am happy you are doing well in school with arithmetic reading and the Golden Rule. I want you to study politics I know it is a sham for it can destroy everything from Prudhoe Bay to Ketchikan. I guess I will close that old arthritis is crimping my fingers and toes.

DISTRIBUTION: 60

Subject: 4AAC 33.421 Statewide Correspondence Study Program Requirements

Date: Sun, 13 Jan 2002 16:19:52 -0900

From: "Terri Terreault"

To: <Representative_Lesil_McGuire@legis.state.ak.us>

Dear Representative Lesil McGuire,

I am a parent involved in the Cyberlynx Correspondence Program and I write to you in opposition of the proposed regulations presently out for public comment that directly relate to the operation of Statewide Correspondence Study Program Requirements.

<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

The proposed regulations are written by the Department of Education with little or no input from the home school population. The proposed regulations will severely limit parental choice and have a devastating impact on student opportunity.

A small percentage of children learn in "the box." Our public school system has failed the rest of our children miserably, which shows clearly in the AK Standards Bench Mark and High School Qualifying exam results. Classes are overcrowded, teachers have neither the time nor the resources to help these children, no matter how many regulations the school board institutes.

My daughter was one of these children. She began her public school career as an open, self-confident child, willing and excited about the prospect of learning. By the time she was in the 5th grade, she was convinced she was "stupid" because she continued to fall farther and farther behind. Her grades were acceptable; the teachers loved her because she was a manageable student. She was quiet, sat at her desk as she had been taught and didn't disrupt the class. By the time she was in the 6th grade she had become invisible. Although still very well behaved, she no longer attempted to participate or learn because she was convinced she wasn't capable of learning.

Public Comment

When the state and federal mandated testing results came in, they showed that she was at a 2-percentile level nationwide. I still believed in the school system and felt as though all my daughters' problems could be resolved. I approached Colony Middle School with my concerns and due to her grades being average, they attempted to assure me that she was doing "fine". I insisted on additional testing and by the middle of 6th grade she was placed in the special education program at 4th grade level. She was devastated, now not only did she know she was "stupid" but so did the rest of her peers. Her social life began following her academic life down the drain. As parents, we felt this was a small price to pay to insure her academic success, as we were confident that she would finally start making progress with the extra assistance. Life at home was greatly affected; our daughter who started out being self-confident and open had become a stranger who we could barely recognize. She was sullen, overly emotional and although she worked on her studies and maintained average grades by doing homework from the bus, she got off the bus until she went to bed, she didn't appear to us to be making much progress.

My frustration level now matched hers. I began exploring other educational possibilities and was told about the home schooling options available. I felt amazed that I lived in a state that cared so much about their children that they were given opportunities to succeed when they would fail if forced to learn the same as all other children. As both my husband and I worked full time, I couldn't see a way to participate and felt that I would be an inadequate teacher because I only had a high school education myself. Surely the teachers who had a degree in education were much more capable of teaching my child. I postponed making a decision until my daughters annual I.E.P. at the end of the 1st semester in 7th grade.

At the meeting, my daughters "team" proudly announced to me that she had progressed to the 4th grade level. When I pointed out that she started the program at the 4th grade level, they still attempted to assure me that she was still doing well. I decided to pull her out of the public school to home school her. They attempted to dissuade me by telling me that it would be detrimental to her education. My response at that point was a question. "How can I possibly do any worse than you have, when you haven't made any progress at all with her for the last year?"

For the rest of the 7th grade, we did little more than build her confidence and work on basics. In the meantime, I did a lot of research on home schooling and discussed our options with both my husband and daughter. My daughter was able to take part in her life by picking out curriculums that she believed would be geared towards her learning style. She had started smiling again and once more was looking forward to a positive learning experience. My fears receded as well and by the end of 8th grade, she not only tested out of the special education program, she had gained 5 grade levels in one year. If this seems to be unusual, compare it to Sylvan Learning Centers who can bring a child up 1 to 3 grade levels in one summer, with the children attending 1 to 2 hours a week. My daughter isn't an exception to the rule; it can be accomplished with all children unless they have severe mental handicaps.

My daughter participated in the Alaska Benchmark exams in the 8th grade. She tested above the proficiency level in all three tests. An example would be: Reading; a proficient score is 265 and my daughter scored a 409. Not bad for a child that 1 ½ year's prior was in the special educational program

and at a 4th grade level. We were able to accomplish this by using different curriculums, based upon my child's needs, not a curriculum "approved" by a school board that suits mainstream children. If she were mainstream, she would be in public school! My daughter is now in the 9th grade and loves learning. She developed a four year plan based on her career choice and will have a minimum of 29 high school credits as well as 18 college credits by the time she graduates. The cost to the state will be minimal compared to her public school counterparts.

This has all been accomplished by the very things the school board is determined to change. Cyberlynx has told us that the Alaska Department of Education has not acted in good faith. Please do not pass regulations until we know that the regulations are written in an open, constructive and inclusive fashion.

The proposed regulations listed under 4 AAC 33.421 Statewide Correspondence Study Program Requirements should be shelved in their entirety until we can be certain that they are not unfairly biased against those of us that choose to take responsibility for educating our children.

Sincerely,

Terri L Terreault

Wasilla, AK. 99654-3625

HOUSE BILL NO. 464

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION**

BY REPRESENTATIVES JAMES, Dyson

Introduced: 2/19/02

Referred: House Special Committee on Education, Health, Education and Social Services

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to statewide school district correspondence study programs."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1.** AS 14.07 is amended by adding a new section to read:

4 **Sec. 14.07.175. Powers relating to statewide school district**
5 **correspondence study.** (a) The board may adopt regulations regarding statewide
6 school district correspondence study programs. A regulation applicable to a statewide
7 school district correspondence study program

8 (1) may not require that the correspondence study program be
9 approved by the department more than once every 10 years; this paragraph does not
10 apply to a statewide school district correspondence study program if the average
11 student assessment in reading, writing, and mathematics for all students in the
12 statewide school district correspondence study program falls below the corresponding
13 statewide average student assessment for two consecutive school years;

14 (2) must provide that an enrolled student shall be monitored at periodic
15 intervals as established by the school district;

1 (3) that implements AS 14.03.090 may not impose limits on the use of
2 teaching materials if the limits are more stringent than limits imposed by this section
3 on teaching materials used by public school students; and

4 (4) may not be imposed if the regulation is not imposed on public
5 school students.

6 (b) In this section, "statewide school district correspondence study program"
7 includes a state supported home-schooling program.

U.S. Supreme Court

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

474 U.S. 481

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

No. 84-1070.

Argued November 6, 1985

Decided January 27, 1986

JUSTICE MARSHALL delivered the opinion of the Court.

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

I

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

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

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

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

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

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

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

II

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

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

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

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

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

Certain aspects of Washington's program are central to our inquiry. As far as the record shows, vocational assistance provided under the Washington program is paid directly to the student, who transmits it to the educational institution of his or her choice. Any aid provided under Washington's program that ultimately flows to religious institutions does so only as a result of the genuinely independent and private choices of aid recipients. 4 Washington's program is "made available generally without regard to the sectarian-nonsectarian, or public-nonpublic nature of the institution benefited," *Committee for Public Education and Religious* [474 U.S. 481, 488] *Liberty v. Nyquist*, 413 U.S., at 782 -783, n. 38, and is in no way skewed towards religion. It is not one of "the ingenious plans for channeling state aid to sectarian schools that periodically reach this Court," *id.*, at 785. It creates no financial incentive for students to undertake sectarian education, see *id.*, at 785-786. It does not tend to provide greater or broader benefits for recipients who apply their aid to religious education, nor are the full benefits of the program limited, in large part or in whole, to students at sectarian institutions. On the contrary, aid recipients have full opportunity to expend vocational rehabilitation aid on wholly secular education, and as a practical matter have rather greater prospects to do so. Aid recipients' choices are made among a huge variety of possible careers, of which only a small handful are sectarian. In this case, the fact that aid goes to individuals means that the decision to support religious education is made by the individual, not by the State.

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

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

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

III

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

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

It is so ordered.

U.S. Supreme Court

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

392 U.S. 236

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

Argued April 22, 1968.

Decided June 10, 1968.

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

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

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

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

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

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

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

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

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

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

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

MR. JUSTICE WHITE delivered the opinion of the Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The judgment is affirmed.

Footnotes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. JUSTICE HARLAN, concurring.

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

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

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

MR. JUSTICE BLACK, dissenting.

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

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

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

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

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

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

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

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

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

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

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

MR. JUSTICE DOUGLAS, dissenting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Dear Faculty Member:

"As a result of several spirited discussions in the Academic Senate, a resolution was passed by that body that a self-evaluation be made of the effectiveness with which we are achieving in our classrooms the stated objectives of the University. . . . The primacy of the spiritual is the reason for a Christian university. Our goal is not merely to equip students with marketable skills. It is far above this - to educate man, the whole man, the theocentric man. As you are well aware, we strive to educate not only for personal and social success in secular society, but far more for leadership toward a theocentric society. . . . [392 U.S. 236, 264]

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

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

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

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

This tendency is no Catholic monopoly:

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

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

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

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

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

These then are the battlegrounds where control of textbook distribution will be won or lost. Now that "secular" textbooks will pour into religious schools, we can rest assured that a contest will be on 16 to provide those books for religious schools which the dominant religious group

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

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

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

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

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

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

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

TEXTBOOK REQUISITION

PUBLISHERS NAME

STREET ADDRESS

CITY AND STATE

SHIP TO - EDISON WAREHOUSE

STREET - VAN GUYSLING AVE.

CITY & STATE - SCHENECTADY, N. Y.

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

EDITION

GRADE LEVEL

PRICE PER BOOK Total Amount

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

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

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

LETTER OF FRANCIS CARDINAL SPELLMAN, NOVEMBER 1, 1967.

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

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

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

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

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

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

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

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

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

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

[Footnote 4] See Appendix A to this opinion.

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

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

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

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

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

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

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

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

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

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

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

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

Francisco and his rebels. On the other hand, Russia supported the loyalists (as the armies of the republic were called). The democratic countries might have supported the loyalists, too, but fear of communism prevented them from doing so. Franco defeated the loyalists and, in 1938, became dictator of Spain and today as El Caudillo ('The Leader') still rules Spain with an iron hand."

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

"As a matter of fact, the State maintains a system of schools which is not completely satisfactory to Catholics, inasmuch as no [392 U.S. 236, 263] place is given to morality and religion. Since the Church realizes that the teaching of religion and instruction in the secular branches cannot rightfully or successfully be separated one from the other, she is compelled to maintain her own system of schools for general education as well as for religious instruction. . . ." 2 A. Stokes, *Church and State in the United States* 654 (1950).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. JUSTICE FORTAS, dissenting.

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

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

sectarian establishments?

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

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

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

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

Chapter 14.07. ADMINISTRATION OF PUBLIC SCHOOLS

Sec. 14.07.010. Department of Education and Early Development.

The Department of Education and Early Development includes the commissioner of education and early development, the state Board of Education and Early Development, and the staff necessary to carry out the functions of the department.

Sec. 14.07.020. Duties of the department.

(a) The department shall

(1) exercise general supervision over the public schools of the state except the University of Alaska;

(2) study the conditions and needs of the public schools of the state, adopt or recommend plans, administer and evaluate grants to improve school performance awarded under AS 14.03.125 , and adopt regulations for the improvement of the public schools;

(3) provide advisory and consultative services to all public school governing bodies and personnel;

(4) prescribe by regulation a minimum course of study for the public schools; the regulations must provide that if a course in American Sign Language is given, the course shall be given credit as a course in a foreign language;

(5) establish, in coordination with the Department of Health and Social Services, a program for the continuing education of children who are held in detention facilities in the state during the period of detention;

(6) accredit those public schools that meet accreditation standards prescribed by regulation by the department; these regulations shall be adopted by the department and presented to the legislature during the first 10 days of any regular session, and become effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house;

(7) prescribe by regulation, after consultation with the state fire marshal and the state sanitarian, standards in addition to the requirements of AS 18.15.145 that will assure healthful and safe conditions in the public and private schools of the state including a requirement of physical examinations and immunizations in pre-elementary schools; the standards for private schools may not be more stringent than those for public schools;

(8) exercise general supervision over pre-elementary schools that receive direct state or federal funding;

Education Statutes

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

(10) accredit private schools that request accreditation and that meet accreditation standards prescribed by regulation by the department; nothing in this paragraph authorizes the department to require religious or other private schools to be licensed;

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

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

(13) administer the grants awarded under AS 14.11;

(14) establish, in coordination with the Department of Public Safety, a school bus driver training course;

(15) require the reporting of information relating to school disciplinary and safety programs under AS 14.33.120 and of incidents of disruptive or violent behavior.

(b) In implementing its duties under (a)(2) of this section, the department shall develop

(1) performance standards in reading, writing, and mathematics to be met at designated age levels by each student in public schools in the state; and

(2) a comprehensive system of student assessments, composed of multiple indicators of proficiency in reading, writing, and mathematics; this comprehensive system must

(A) be made available to all districts and regional educational attendance areas;

(B) include a developmental profile for students entering kindergarten or first grade; and

(C) include performance standards in reading, writing, and mathematics for students in age groups five through seven, eight through 10, and 11 - 14.

(c) In this section "pre-elementary school" means a school for children ages three through five years if the school's primary function is educational.

Sec. 14.07.030. Powers of the department.

The department may

- (1) establish, maintain, govern, operate, discontinue, and combine area, regional, and special schools;
- (2) enter into contractual agreements with the Bureau of Indian Affairs or with a school district to share boarding costs of secondary school students;
- (3) provide for citizenship night schools when and where expedient;
- (4) provide for the sale or other disposition of abandoned or obsolete buildings and other state-owned school property;
- (5) prescribe a classification for items of expense of school districts;
- (6) acquire and transfer personal property, acquire real property, and transfer real property to federal agencies, state agencies, or to political subdivisions;
- (7) enter into contractual agreements with school districts to provide more efficient or economical education services; reasonable fees may be charged by the department to cover the costs of providing services under an agreement, including costs for professional services, reproduction or printing, and mailing and distribution of educational materials;
- (8) provide for the issuance of elementary and secondary diplomas to persons not in school who have completed the equivalent of an 8th or 12th grade education, respectively, in accordance with standards established by the department;
- (9) apply for, accept, and spend endowments, grants, and other private money available to the state for educational purposes in accordance with AS 37.07 (Executive Budget Act);
- (10) set student tuition and fees for educational and extracurricular programs and services provided and schools operated by the department under the provisions of (1) of this section and AS 14.07.020 (a)(9), (11), and (12);
- (11) charge fees to cover the costs of care and handling with respect to the acquisition, warehousing, distribution, or transfer of donated foods;
- (12) establish and collect fees for the rental of school facilities and for other programs and services provided by the schools;
- (13) develop a model curriculum and provide technical assistance for early childhood education programs.

Sec. 14.07.035. Accounting and disposition of receipts. [Repealed, Sec. 28 ch 90 SLA 1991].

Repealed or Renumbered

Sec. 14.07.040. Supplies and equipment for state-operated schools. [Repealed, Sec. 34 ch 46 SLA 1970].

Repealed or Renumbered

Sec. 14.07.050. Selection of textbooks.

Textbooks for use in the public schools of the state shall be selected by district boards for district schools.

Sec. 14.07.052. State Textbook Commission. [Repealed, Sec. 2 ch 96 SLA 1970].

Repealed or Renumbered

Sec. 14.07.053. - 14.07.054 [Renumbered as AS 14.07.058 - 14.07.059].

Repealed or Renumbered

Sec. 14.07.055. Expenses and per diem. [Repealed, Sec. 19 ch 53 SLA 1973].

Repealed or Renumbered

Sec. 14.07.057. Transmittal of textbook selections.

A school board that selects its own books shall forward a list of the selections to the department.

Sec. 14.07.058. , 14.07.059 Alaska School Activities Association; activities fund. [Repealed, Sec. 13, ch 43 SLA 1994].

Repealed or Renumbered

Sec. 14.07.060. Regulations.

The board shall adopt regulations that are necessary to carry out the provisions of this title. All regulations shall be adopted under AS 44.62 (Administrative Procedure Act).

Sec. 14.07.070. Withholding state funds.

State funds may not be paid to a school district or teacher that fails to comply with the school laws of the state or with the regulations adopted by the department.

Sec. 14.07.145. Commissioner of education and early development.

(a) The board shall appoint the commissioner of education and early development subject to the approval of the governor. The commissioner shall be the principal executive officer of the department.

(b) The commissioner shall be appointed without regard to political affiliation and shall have at least a master's degree with five years' experience in the field of education since receiving it, with at least three of the five years in an exclusively administrative position.

(c) The commissioner serves at the pleasure of the board and may not be appointed by the board for a fixed term.

(d) The commissioner shall receive the salary set out in AS 39.20.080 .

(e) The commissioner shall employ and remove all classified personnel in the department subject to AS 39.25 (State Personnel Act). The commissioner may employ and remove personnel in the exempt or partially exempt service subject to the approval of the board. Personnel in the exempt or partially exempt service have a right of appeal to the board if they are removed.

(f) [Repealed, Sec. 5 ch 14 SLA 1996].

Sec. 14.07.150. Budget and fiscal authority.

The commissioner has responsibility and authority for the preparation and execution of a budget and for the other fiscal affairs of the department, subject to the approval of the board.

Sec. 14.07.155. Partisan candidacy prohibited.

A member of the board may not be a candidate for partisan political office while serving as a member of the board.

Sec. 14.07.160. Bylaws.

(a) The board may adopt bylaws for the management of the department.

(b) The bylaws shall be written and distributed in a manner so as to be readily available to personnel of the department.

(c) This section may not be construed to allow the use of a bylaw rather than a regulation where the subject is of statewide importance or interest.

Sec. 14.07.165. Duties.

The board shall adopt

- (1) statewide goals and require each governing body to adopt written goals that are consistent with local needs;
- (2) regulations regarding the application for and award of grants under AS 14.03.125 ;
- (3) regulations implementing provisions of AS 14.11.014 (b);
- (4) regulations requiring approval by the board before a charter school, state boarding school, or a public school may provide domiciliary services;
- (5) regulations implementing the secondary school student competency examination provisions of AS 14.03.075 , including the criteria and procedure under which a governing body uses a waiver to grant a diploma to a student; criteria regarding granting a waiver must include provisions that a waiver may only be granted for students who enter the system late or have rare or unusual circumstances meriting a waiver.

Sec. 14.07.170. Additional powers and duties of board.

(a) The board may

- (1) appoint unpaid advisory commissions;
- (2) require school boards or school personnel to submit to the department, in the form the board may require, the district budget or any information or reports that are reasonably necessary to assist the department in carrying out its functions.

(b) The board shall review grant applications recommended under AS 14.11.013 and may approve grant applications under AS 14.11.015 .

Sec. 14.07.181. Pamphlet concerning controlled substances. [Repealed, Sec. 19 ch 6 SLA 1998].

Repealed or Renumbered

Chapter 14.08. EDUCATION IN THE UNORGANIZED BOROUGH

Sec. 14.08.010. [Repealed, Sec. 1 ch 124 SLA 1975].

Repealed or Renumbered

Sec. 14.08.011. Purpose.

(a) It is the purpose of this chapter to provide for public education in the unorganized borough and the military reservations in the state.

(b) Nothing in this chapter prohibits an organized borough, city, village, community, or settlement in an unorganized area of the state from becoming part of or being formed into an organized political subdivision authorized under AS 29.

Sec. 14.08.020. [Repealed, Sec. 1 ch 124 SLA 1975].

Repealed or Renumbered

Sec. 14.08.021. Authority.

The legislature delegates to school boards for each regional educational attendance area the authority to operate the public schools in those areas in accordance with the provisions of this chapter, subject to the provisions of this title and the regulations adopted under it that apply to all school districts in the state.

4 AAC 04.010. PURPOSES AND RESPONSIBILITIES

Statute text

(a) This chapter sets out statewide goals for public education, and adopts, by reference, content standards for several subject areas, and performance standards for reading, writing, and mathematics.

(b) The purposes of the goals are to

(1) encourage the school districts to envision and develop local educational plans that are unique to each district's culture, geography, and climate, and that will graduate world-class students;

(2) empower the public with the knowledge that the skills and subjects included in this chapter are of great importance to education so that the public can participate in local educational planning with more authority and effect; and

(3) set standards against which the public, school districts, teachers, and students can measure the quality of education that students receive.

(c) The content standards and goals referred to in this chapter identify student abilities that evidence mastery of a subject area. The content standards are not graduation requirements or components of a curriculum, but they establish what constitutes excellent educational results. The content standards and goals are intentionally broad to allow a school district to tailor its curriculum to the conditions, goals, and expectations of its community. A school district board, working with the public, teachers, and students shall choose and implement effective teaching strategies so that its students will achieve high performance in a subject area. These strategies should be reflected in

(1) the development, selection, and implementation of the school district board policies;

(2) the curriculum and assessment required by 4 AAC 05.080; and

(3) teaching methodology, textbooks and instructional materials, and management practices.

History History: Eff. 6/24/93, Register 126; am 1/4/95, Register 133; am 3/2/2000, Register 153

Annotations

Authority: AS 14.03.015 AS 14.03.120 AS 14.07.020 AS 14.07.050 AS 14.07.060
AS 14.07.165

4 AAC 04.020. SKILLS FOR GRADUATING STUDENTS

Statute text A goal of the state public school system is to graduate students who will

- (1) communicate effectively; (2) think logically and critically;
- (3) discover and nurture their own creative talents;
- (4) master essential vocational and technological skills; (5) be responsible citizens;
- (6) be committed to their own health and fitness; and
- (7) accept personal responsibility for sustaining themselves economically.

History History: Eff. 6/24/93, Register 126 Annotations

Authority: AS 14.03.015 AS 14.07.020 AS 14.07.060 AS 14.07.165 AS 14.07.050
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4 AAC 04.030. SUBJECTS

Statute text A goal of the state public school system is to provide a working knowledge of

- (1) English; (2) mathematics; (3) science; (4) geography; (5) history;
- (6) skills for a healthy life; (7) government and citizenship; (8) fine arts;
- (9) technology; and (10) world languages.

History History: Eff. 6/24/93, Register 126 Annotations

Authority: AS 14.03.015 AS 14.07.020 AS 14.07.060 AS 14.07.165

4 AAC 04.040. ENGLISH AND LANGUAGE ARTS PERFORMANCE STANDARDS

Statute text Repealed.

History

History: Eff. 1/4/95, Register 133; repealed 3/2/2000, Register 153

4 AAC 04.050. MATHEMATICS PERFORMANCE STANDARDS

Statute text Repealed.

4 AAC 04.030. SUBJECTS

Statute text A goal of the state public school system is to provide a working knowledge of

- (1) English; (2) mathematics; (3) science; (4) geography; (5) history;
(6) skills for a healthy life; (7) government and citizenship; (8) fine arts;
(9) technology; and (10) world languages.

4 AAC 04.140. CONTENT STANDARDS

Statute text

The content standards for the subjects listed in this section, as set out in the department's publication entitled Alaska Standards: Standards for Alaska Students, as revised as of February 1999, are adopted by reference. The subjects are

- (1) English/language arts; (2) mathematics; (3) science; (4) geography;
(5) government and citizenship; (6) history; (7) skills for a healthy life; (8) arts;
(9) world languages; (10) technology; and (11) employability.

Chapter 05 Local Education

4 AAC 05.080. SCHOOL CURRICULUM AND PERSONNEL

Statute text

(a) The curriculum of a local school may be supplemented through the use of correspondence course materials approved by the commissioner. This use is not grounds for shortening the day in session, as prescribed by AS 14.03.040 , for any student.

(b) The governing body of a district shall comply with the statutes and regulations of the state in providing the educational program described in the plan developed under 4 AAC 05.070(a) .

(c) Repealed 6/11/95.

(d) The governing body of a district shall adopt, in the manner required by AS 14.14.100 (a), a curriculum that describes what will be taught students in grades kindergarten through 12. The curriculum

(1) must contain a statement that the document is to be used as a guide for planning instructional strategies;

(2) must contain a statement of goals that the curriculum is designed to accomplish;

(3) must set out content that can reasonably be expected to accomplish the goals;

(4) must contain a description of a means of evaluating the effectiveness of the curriculum; and

(5) may contain a description of the extent to which the local goals accomplish the state goals set out in 4 AAC 04.

(e) The governing body of a district shall provide for the systematic evaluation of its curriculum on an ongoing basis with each content area undergoing review at least once every six years. This requirement does not relieve a school district of the independent annual planning and evaluation requirement imposed by 4 AAC 05.070.

(f) The governing body of a district shall provide for the annual assessment of academic progress made by students in attendance in the district using a test, administered at appropriate grade levels, that is appropriate for the grade tested, and that is designed to assess student skill level or achievement in at least reading and mathematics. The test required by this subsection must be approved by the commissioner before it is administered for the first time.

(g) The governing body of a district shall ensure that each school provides the educational program described in the plan developed under 4 AAC 05.070(a) and the curriculum required by this section.

Local Schools Regulations

4 AAC 05.900. DEFINITIONS

Statute text

In this chapter, unless the context requires otherwise,

- (1) "commissioner" means the commissioner of education and early development;
- (2) "community" means a home-rule city, a city of any class, an incorporated village, or an unincorporated village;
- (3) "department" means the Department of Education and Early Development;
- (4) "local school committee" or "committee" means an elected advisory school board established under AS 14.08.115 or, if there is no such board in the community, an elected borough school district advisory school board established under AS 14.12.035 or, if there is no elected borough school district advisory school board, the village or city council;
- (5) "school" means a program of instruction which complies with all statutes, regulations and requirements applicable to the operation of public schools in the state;
- (6) "curriculum" means a written plan which sets out the scope and arrangement of the educational program planned for a school district.

To: Members of the State Board of
Education & Early Development

February 4, 2002

From: Shirley J. Holloway, Commissioner

Agenda Item: 1

◆ **ISSUE**

The Funding of Statewide Correspondence Programs is a special report prepared by department staff at the request of the State Board of Education & Early Development.

◆ **BACKGROUND**

Currently, statewide correspondence programs generate \$3,208 per student and more if the district is receiving supplemental funding floor. Some statewide correspondence programs are generating foundation funding in excess of the amounts being provided for family allotment accounts and other support services. It appears that in some statewide correspondence programs, these excess funds are being diverted to support other school district activities.

During the state board meeting on November 28, 2001, the board directed department staff to review the board's authority to require statewide correspondence programs to spend foundation aid that is generated by the students enrolled in the statewide correspondence program on that program and bring back a proposed regulation to address statewide correspondence program funding. The report following this cover memo outlines the issues, legal considerations, practical issues, and recommendations for the state board's consideration.

Karen Rehfeld, Director of Education Support Services, and Eddy Jeans, School Finance Manager, will be present to brief the board.

◆ **OPTIONS**

This is an information item. No action is required.

Department of Education & Early Development
Funding of Statewide Correspondence Programs

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I. Background:

Currently, statewide correspondence programs generate \$3,208 per student and more if the district is receiving supplemental funding floor. Some statewide correspondence programs are generating foundation funding in excess of the amounts being provided for family allotment accounts and other support services. It appears that in some statewide correspondence programs, these excess funds are being diverted to support other school district activities. The state board is considering placing a proposed regulation out for public comment requiring statewide correspondence programs to spend foundation aid that is generated by the students enrolled in the statewide correspondence program on that program.

II. Legal Authority:

The state board has broad authority to regulate Alaska's public school districts, including the expenditure of school district money (AS 14.17.910(b)). The board, however, has never exercised its authority over school district budgets in a manner prescribed by the proposed regulation. It could be argued that the board may be over stepping its authority by requiring statewide correspondence programs to spend foundation aid that is generated on the statewide program because school districts are responsible for developing their own budget.

The public school funding program allocates state revenue to school districts, not programs, based on a number of factors outlined in AS 14.17. One of the factors for determining state aid to a school district is the number of students enrolled in its correspondence program.

The legislature has passed laws when they felt it was appropriate/necessary to direct school districts how to spend or allocate state foundation aid. The charter school law (AS 14.03.250-290), the minimum expenditure for instruction requirement (AS 14.17.520), and the state funding for correspondence study (AS 14.17.430) are good examples of that direction. The charter school law specifically states that the foundation funds generated by the charter school shall be allocated to that school. The minimum expenditure for instruction law requires school districts to spend 70% of their operating fund revenues on instructional components. Instructional components are defined by regulation. The correspondence funding law is clear that a school district receives a funding allocation based on 80% of the Average Daily Membership (ADM) in the correspondence program.

Department of Education & Early Development
Funding of Statewide Correspondence Programs

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Within the foundation program is a component called quality school funding (AS 14.17.480). In this law the legislature directed the department to develop regulations to implement a grant process for these funds. The grant process defines for school districts allowable expenditures for these grant funds. This is an example of the legislature directing or restricting the intended purpose of the funds.

The state funding for correspondence study law provides that districts receive a reduced amount from the public school account for a district correspondence program, including a district that offers a statewide correspondence study program (AS 14.17.430). The legislature passed this law in 1998 and it is the most recent statement from the legislature regarding the funding of correspondence programs. The legislature heard testimony regarding some of the practices this proposed regulation would stop and chose not to enact legislation similar to the current proposed regulation. Instead of dictating to districts how state funds for correspondence students could be spent, the legislature reduced the overall amount of state funds districts could receive for correspondence programs. Given these statutes, it is unlikely that the proposed regulation would survive a legal challenge in the courts.

Representation

Local school boards are charged with providing educational opportunities to the students that reside within their district. If parents are unhappy with the school or educational program they can go to the local school board for relief. A parent in a community can even run for a school board seat and effect change that way. The parent of a statewide correspondence program student has no representation at the local level and cannot influence change. Their choice is to withdraw and enroll with another program.

By allocating a portion of the funds generated by students enrolled in statewide correspondence programs the local school board can redirect the excess funds to improve the educational opportunities for their district students. The districts students are exactly who the school board members were elected to represent. An elected school board has no responsibility for students that do not reside in the school district.

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Funding of Statewide Correspondence Programs

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III. Practical Issues:

Management and Monitoring

The department does not have the staff or resources to monitor school district expenditures that operate statewide correspondence programs to ensure the funds are being spent on the statewide program/students. The department would have to develop new requirements for districts to report statewide correspondence program expenditures. The current school district chart of accounts does not require districts to report correspondence expenditures as a separate category. Districts account for correspondence expenditures under regular instruction. The department would also have to develop guidelines for allowable program charges.

The department is requesting two new positions in the FY2003 budget to provide support for statewide correspondence programs in the area of application review and approvals and program monitoring. Without these additional staff, the department has no capacity to manage or monitor statewide correspondence programs under the current requirements. If the board were to expand the requirement to restrict the funds generated to serve students enrolled in the statewide correspondence program, additional staff would be necessary.

IV. Recommendation:

Alaska law respects the local control of school districts by elected school boards. The legislature has given specific direction in areas where funding is limited or restricted. After careful review of current laws and regulations, and consultation with the department's legal counsel, the department believes that statutory changes would be necessary in order for the State Board of Education and Early Development to promulgate regulations that would require that statewide correspondence programs spend foundation aid that is generated by the students enrolled in the statewide correspondence program on that program.

The department recommends that the State Board of Education and Early Development reject opening a period of public comment on the proposed regulation at its meeting on February 11, 2002.

To: Members of the State Board of
Education & Early Development

February 4, 2002

From: Shirley J. Holloway, Commissioner

Agenda Item: 2

◆ **ISSUE**

The Board requested the Department staff develop for Board consideration a white paper and regulation language relating to opening a period of public comment on regulations 4 AAC 33.422, regarding Restriction on Funds for Statewide Correspondence Programs.

◆ **BACKGROUND**

Currently, statewide correspondence programs generate \$3,208 per student and more if the district is receiving supplemental funding floor. Some statewide correspondence programs are generating foundation funding in excess of the amounts being provided for family allotment accounts and other support services. It appears that in some statewide correspondence programs, these excess funds are being used to support other school district activities.

During the state board meeting on November 28, 2001, the board directed department staff to review the board's authority to require statewide correspondence programs to spend foundation aid that is generated by the students enrolled in the statewide correspondence program on that program and bring back a proposed regulation to address statewide correspondence program funding. Department staff prepared a white paper included in Agenda Item 1 that outlines the issues, legal considerations, practical issues, and recommendations for the state board's consideration.

Karen Rehfeld, Director of Education Support Services, and Eddy Jeans, School Finance Manager, will be present to brief the board.

◆ **OPTIONS**

Open a period of public comment on the proposed regulation.
Amend the proposed regulation and open a period of public comment.
Seek more information
Reject the motion to open a period of public comments on the proposed regulation.

◆ **ADMINISTRATION'S RECOMMENDATION**

Reject the motion to open a period of public comments on the proposed regulation.

◆ **SUGGESTED MOTION**

I move the State Board of Education & Early Development open a period of public comment on 4 AAC 33.422, Restriction on Funds for Statewide Correspondence Programs, as printed.

Register _____, _____ 2002 EDUCATION AND EARLY DEV.

CHAPTER 33 SPECIAL SCHOOLS.

4 AAC 33 is amended by adding a new section to read:

4AAC33.422. RESTRICTION ON FUNDS FOR STATEWIDE

CORRESPONDENCE PROGRAMS. Funds provided to the district for out-of-district students served by a statewide correspondence program must be spent on programs for those out-of-district students.

(Eff. 5/1/99, Register 150; am 6/15/2000, Register 154; am ___/___/___,

Register ___)

| | | | |
|------------|--------------|--------------|--------------|
| Authority: | AS 14.07.020 | AS 14.07.030 | AS 14.07.060 |
| | AS 14.08.101 | AS 14.14.110 | AS 14.17.430 |
| | AS 14.30.010 | | |

MEMORANDUM

State of Alaska

Department of Law

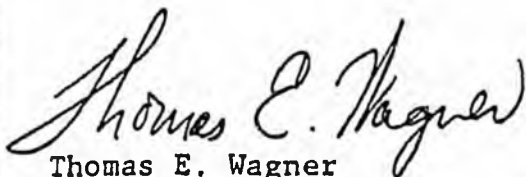
Barney Gottstein, Chairman
State Board of Education

DATE September 15, 1988

FILE NO. 663-88-0573

TEL. NO.: 465-3603

SUBJECT: Religious teaching in
public schools



Thomas E. Wagner
Assistant Attorney General
Human Services-Juneau

You have asked for general advice concerning the extent to which religious teaching may be introduced into the public schools of Alaska. You have also asked whether the Professional Teaching Practices Commission ("PTPC") has jurisdiction to hear and resolve complaints that a professional educator has inappropriately injected his or her own religious views into the classroom.

In our opinion, although public school teachers may teach about various religions as part of the curriculum in public schools, they may not advocate a particular religious view or teach that a particular religious view is true or false. The Professional Teaching Practices Commission has jurisdiction to hear complaints about the inappropriate advocacy of personal religious views in the classroom, and to take appropriate disciplinary action if the complaints are justified.

AS 14.03.090 provides:

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

That section does not mean that teachers may not discuss different religions, teach about the fundamental tenets of each, explore the history of various religious groups, or even explore the Bible or other religious texts from a literary and historical viewpoint. It simply means that they may not teach any particular set of religious beliefs as true beliefs.

The rule is much the same under the establishment clause of the First Amendment to the U.S. Constitution:

Congress shall make no law respecting an establishment of religion

Barney Gottstein, Chairman
 State Board of Education
 663-88-0573

September 15, 1988
 Page 2

While the establishment clause by its terms requires only that Congress make no laws respecting an establishment of religion, the Fourteenth Amendment has made that same proscription applicable to the states. School District of Abington Township v. Schempp, 374 U.S. 203, 215-16, 83 S. Ct. 1560, 1567-68, 10 L. Ed. 2d 844, 854 (1963) (citing Cantwell v. Connecticut, 310 U.S. 296, 303, 60 S. Ct. 900, 903, 84 L. Ed. 1213, 1218 (1940)). Political subdivisions of the state, such as school districts, are bound by the constitutional restrictions on the state itself because they exercise state power that has been delegated to them by the state.

Simply stated, the establishment clause requires that the public schools be neutral with respect to religious beliefs, and neither aid nor oppose any particular set of beliefs.

While study of religions and of the Bible from a literary and historic viewpoint, presented objectively as part of a secular program of education, need not collide with the First Amendment's prohibition, the State may not adopt programs or practices in its public schools or colleges which "aid or oppose" any religion.

Epperson v. Arkansas, 393 U.S. 97, 106, 89 S. Ct. 266, 271, 21 L. Ed. 2d 228, 235 (1968) (citing Abington School District, 374 U.S. at 225, 83 S. Ct. at 1573). "Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family." Edwards v. Aguillard, ___ U.S. ___, ___, 107 S. Ct. 2573, 2577 (1987).

The First Amendment goes beyond AS 14.03.090 in that, under that statute, only advocacy of partisan or sectarian religious beliefs is prohibited, while under the First Amendment, the state may neither advocate nor oppose religious beliefs. It must remain neutral. It must remain neutral not only between those who believe in various religions, but also between those who believe in some religion and those who believe in no religion. Although we have found no cases construing the establishment clause, art. I, § 4, of the Alaska Constitution ("no law shall be made respecting an establishment of religion"), as it pertains to the treatment of religion in the public school curriculum, we believe it would be interpreted similarly.

Under AS 14.20.030, either the PTPC or the commissioner may suspend or revoke a teacher certificate for "substantial

THE
FOLLOWING
DOCUMENT(S)
ARE
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DOE MEMORANDUM DATED NOV. 7, 1997

This can be found at http://www.educ.state.ak.us/DOE_News/InfoExch/table.html

DOE INFORMATION EXCHANGE

Vol. 24 No.10 November 7, 1997

COMMISSIONER ISSUES MEMORANDUMS

Commissioner of Education Shirley Holloway issued two numbered memorandums to school districts this week dealing with out of district enrollment in correspondence programs and religious curricula.

Memorandum 97-12 establishes 1.0 as the area cost differential that school districts will be able to apply to their foundation program computation for out-of-district students enrolled in the school district's correspondence study program. In addition, the memorandum states that the Department of Education will convene a working group to establish standards for correspondence school programs, and that legislation will be introduced in the 1998 legislative session to determine a fair rate of reimbursement for all correspondence study programs.

~~Memorandum 97-13~~ prohibits the purchase by school districts of curricula from sectarian sources. Such purchases, the memorandum states, violate the Alaska Constitutional provision for all public schools to be free of sectarian control and that prohibits public funds from being spent for the direct benefit of any religious or other private institution.

Online Public Notice

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| Submitted by | Date Modified | Alk Admin Journal | Attachments | Public (Web edit) |
|---|------------------------|-------------------|-------------------|-------------------|
| Sheila Box/OOC/EED
on 02/19/2002 at 02:32 PM | 02/19/2002 02:40:58 PM | [not printed] | No files attached | |

Supplemental Notice on proposed changes to 4 AAC 33.420-490, Statewide Correspondence.

Category: Notices of Proposed Regulations

Department: Education & Early Development
Location: Statewide
Region: Statewide

Publish Date: 02/19/2002

Body of Notice:

Supplemental Notice on proposed changes to 4 AAC 33.420-490, Statewide Correspondence

Attached is a Supplemental Notice of Proposed Changes in the regulations of the Department of Education & Early Development, adding to the Notice of Proposed Changes that was issued on December 7, 2001. This supplemental notice is being furnished to notify a change in the dates of the meeting scheduled for March 28, 29, and 30. **The new meeting dates are April 4, 5, and 6, 2002.** The meeting will still be held in Juneau. Copies of the proposed regulation are available from the Office of the Commissioner, Department of Education & Early Development, Attn: Regulations Review, 801 West Tenth Street, Suite 200, Juneau, Alaska 99801-1894 or can be found on the department's web site <http://www.eed.state.ak.us/regs>. The written public comment period is open on this proposed change from December 7, 2001 to March 4, 2002. Additionally, any person may present oral comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed action, at an oral hearing during the regular meeting of the Alaska State Board of Education & Early Development, April 4, 8:30 a.m. to 9:30 a.m. at the State Board Room, 801 West Tenth Street, Juneau, Alaska.

SUPPLEMENTAL NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE STATE BOARD OF EDUCATION & EARLY DEVELOPMENT

The State Board of Education & Early Development proposes to adopt regulation changes in Title 4 of

the Alaska Administrative Code, dealing with statewide correspondence, including the following:

1. 4 AAC 33.420 DEPARTMENT APPROVAL, adding reference to a new section clarifying the requirements for the operation of a statewide correspondence program.
2. 4 AAC 33.421 STATEWIDE CORRESPONDENCE STUDY PROGRAM REQUIREMENTS, a new subsection clarifying the requirements for operation of a statewide correspondence study program.
3. 4 AAC 33.430 ENROLLMENT OF OUT-OF-DISTRICT STUDENTS, adding reporting requirements for districts enrolling out-of-district students in correspondence programs.
4. 4 AAC 33.432 ENROLLMENT OF SPECIAL EDUCATION STUDENTS, clarifying the role of the enrolling district in delivery of special education services.
5. 4 AAC 33.450 FAILURE TO PARTICIPATE IN STATE MANDATED ASSESSMENT TESTS, a new subsection outlining the consequences for a student failing to participate in state mandated assessments.
6. 4 AAC 33.460 PROGRAM REVIEW, a new subsection requiring districts at the request of the department to provide information for the purpose of monitoring the district's correspondence program.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Commissioner's Office, Department of Education & Early Development, Attn: Regulations Review, 801 West Tenth Street, Suite 200, Juneau, Alaska, 99801-1894. Comments may also be submitted via facsimile, (907) 465-4156, or via the Internet, at <http://www.eed.state.ak.us/regs/>. Comments must be received no later than 4:30 p.m. on March 4, 2002.

Oral comments may be submitted at a hearing to be held on April 4, 2002 in the State Board Room, 801 West Tenth Street, Juneau, Alaska. The hearing will be held from 8:30 a.m. to 9:30 a.m. and might be extended to accommodate those present before 8:15 a.m. who did not have an opportunity to comment. Persons may also comment at the oral hearing via the following Legislative Information Offices:

Anchorage 716 West 4th Avenue Suite 200
Barrow Room 305 Bank Building
Cordova 705 2nd Street
Fairbanks 119 N Cushman Suite 101
Juneau Room 111 Terry Miller Building
Kenai 145 Main St. Loop Suite 217
Ketchikan 50 Front St. Suite 203
Kodiak 112 Mill Bay Rd. Kodiak Plaza Bldg.
Kotzebue 373 2nd Street Pillautaq Building
Mat-Su 600 East Railroad Avenue
Nome 320 East Front St. State Office Bldg.
Seward 2001 Seward Highway
Sitka 210 Lake Street
Wrangell 223 Front Street

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Sheila Box at 907-465-2801, or e-mail sheila_box@eed.state.ak.us, no later than 5 days before the accommodation is needed, to ensure that any necessary accommodations can be provided.

For a copy of the proposed regulation changes, contact the Commissioner's Office at Department of Education & Early Development, 801 West Tenth Street, Suite 200, Juneau, Alaska, 99801-1894, email

sheila_box@eed.state.ak.us, call 907-465-2801, or go to <http://www.eed.state.ak.us/regs>.

After the public comment period ends, the State Board of Education & Early Development will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The board is expected to review and discuss this proposed regulation during its work session April 4 and regular meeting April 5 and 6, 2002, prior to taking action. The language of the final regulations may be different from that of the proposed regulations. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.**

Statutory Authority: AS 14.03.040; AS 14.03.090; AS14.07.020; AS 14.07.030; AS 14.07.060; AS 14.08.101; AS 14.08.111; AS 14.07.170; AS 14.07.050; AS 14.14.090; AS 14.14.110; AS 14.17.430; AS 14.20.010; AS 14.30.010; AS 14.30.186

Statutes Being Implemented, Interpreted, or Made Specific: AS 14.03.040; AS 14.03.090; AS14.07.020; AS 14.07.030; AS 14.07.060; AS 14.08.101; AS 14.08.111; AS 14.07.170; AS 14.07.050; AS 14.14.090; AS 14.14.110; AS 14.17.430; AS 14.20.010; AS 14.30.010; AS 14.30.186

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

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NEA/Alaska, Juneau, Fairbanks, Anchorage
Association of Alaska School Boards
Alaska Association of School Administrators
Alaska Association of Elementary Principals
Alaska Association of Secondary Principals

DATE: February 14, 2002

/s/ Shirley J. Holloway, Ph.D., Commissioner

ADDITIONAL REGULATIONS NOTICE INFORMATION (AS 44.62.190(d))

1. Adopting agency: Alaska Department of Education & Early Development
2. General subject of regulation: Statewide Correspondence
3. Citation of regulation: 4 AAC 33.420-490
4. Reason for the proposed action:
() compliance with federal law

- compliance with new or changed state statute
 compliance with court order
 development of program standards
 other: _____

5. Program category and BRU affected: State Board of Education & Early Development

6. Cost of implementation to the state agency and available funding (in thousands of dollars)

Initial Year

Cost \$ 0
General fund \$ 0
Federal funds \$ 0
Other funds
(specify) \$ 0

Subsequent(FY 02) Years

Cost \$ 0
General fund \$ 0
Federal funds \$ 0
Other funds
(specify) \$ 0

7. The name of the contact person for the regulations:

PJ Ford Slack, Director Teaching and Learning Support, Department of Education & Early Development, 801 West Tenth Street, Juneau, AK 99801-1894, (907) 465-8689.

8. The origin of the proposed action: At the direction of the State Board of Education & Early Development at its meeting in Anchorage, November 27, 2001.

February 14, 2002

Prepared by:
Sheila Box
Executive Secretary, State Board of Education
& Early Development
(907) 465-2801

Revision History:

02/19/2002 02:32:21 PM by Sheila Box/OOC/EED/State/Alaska/US
02/19/2002 02:40:58 PM by Sheila Box/OOC/EED/State/Alaska/US

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Submitted by

Date Modified

Ak Admin Journal Attachments

Public (Web edit)

Sheila Box/OOC/EED
on 12/07/2001 at 03:22 PM

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FINAL edited at mung.doc

Proposed Changes to 4 AAC 33.420-490, Statewide Correspondence

Category: Notices of Proposed Regulations

Department: Education &
Early Development

Publish Date: 12/07/2001

Location: Statewide
Region: Statewide

Body of Notice:

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Oral comments may be submitted at a hearing to be held on March 28, 2002 in the State Board Room, 801 West Tenth Street, Juneau, Alaska. The hearing will be held from 1:00 p.m. to 2:00 p.m. and might

Association of Alaska School Boards
Alaska Association of School Administrators Alaska Association of Elementary Principals Alaska
Association of Secondary Principals

December 7, 2001

/s/ Karen Rehfeld, for

Shirley J. Holloway, Ph.D., Commissioner

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(AS 44.62.190(d))

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(FY 02) Years

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Federal funds \$ 0 \$ 0

Other funds

(specify) \$ 0 \$ 0

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December 7, 2001

Prepared by:

Sheila Box

Executive Secretary,

State Board of Education & Early Development

(907) 465-2801