

CLERK'S OFFICE

APPROVED

Date: 10-20-98

Submitted by: Assemblymember CARLSON

Prepared by: Assembly Office

For reading: August 25, 1998

ANCHORAGE, ALASKA

AR NO. 98- 281

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY SUPPORTING THE YOUTH RISK BEHAVIOR SURVEY AS AN IMPORTANT SOURCE OF INFORMATION ON HEALTH-RELATED BEHAVIORS, AND REQUESTING THAT THE ANCHORAGE SCHOOL DISTRICT CONDUCT THE SURVEY IN ACCORDANCE WITH CURRENT STATE LAW AND DISTRICT POLICY

WHEREAS, the Constitution of Alaska, Article 1, Section 22, reads, "The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section."; and

WHEREAS, Alaska Statute 14.03.110 reads, "A school district, principal or other person in charge of a public school, or teacher in a public school may not administer or permit to be administered in a school any questionnaire or survey, whether anonymous or not, which inquires into private family affairs of the student not a matter of public record or subject to public observation unless written permission is obtained from the student's parent or guardian."; and

WHEREAS, Anchorage School District's policy on 'student surveys' (see attached) adopted the following language:

State statute language (14.03.110): "A school district, principal or other person in charge of a public school, or teacher in a public school may not administer or permit to be administered in a school any questionnaire or survey, whether anonymous or not, which inquires into private family affairs of the student not a matter of public record or subject to public observation unless written permission is obtained from the student's parent or guardian."; and

Federal regulation language (Protection of Pupil Rights): No student shall be required to submit to a survey on the student's political affiliations; mental and psychological problems; sex behavior and attitudes; illegal, anti-social, self-incriminating and demeaning behavior; critical appraisals of other individuals with which whom respondents have close family relationships; legally-recognized privileged or analogous relationships; and income; and

WHEREAS, according to this School District policy, only surveys not seeking information in the above categories may be administered without parental consent; and

WHEREAS, implementation of a Youth Risk Behavior Survey within the Anchorage School District is being planned for the spring of 1999, seeking information such as students' tobacco, alcohol, and drug use; and sexual behaviors; and

WHEREAS, according to a July 20, 1998 letter from the Municipal Health & Human Services Department, Community Health Promotion Section, this survey will provide important health-related information on young people, and the information will provide the base for much of the department's community planning; and the department's support for the survey "is also based on the fact that parents of each student to be surveyed will be notified in advance, given the opportunity to review the survey, and have the right to ask their children to not participate in the survey."; and

4 WHEREAS, there have been conflicting legal opinions (see attached) on whether such a survey
5 requires written permission of the student's parent or guardian, with no clear interpretation on what
6 constitutes "inquiring into the private family affairs of the student".
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8 NOW, THEREFORE, the Anchorage Municipal Assembly resolves:
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10 Section 1: That the Assembly supports implementation of the Youth Risk Behavior Survey
11 as a means to collect needed information to improve the effectiveness of services
12 provided by the Municipal Department of Health & Human Services.
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14 Section 2: That, given the legal interpretation concerns on this issue, the survey be
15 conducted strictly according to current State law and Anchorage School District
16 policy by obtaining written permission of students' parents or guardians.
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18 PASSED AND APPROVED by the Anchorage Municipal Assembly this 20th day of
19 October, 1998.
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Chair

ATTEST:


Municipal Clerk

Rights and Responsibilities

Secondary Level

Anchorage School District

sion poses threat to life or property.

- c. *Automobiles:* The school principal or his/her designee may search automobiles which are parked on school grounds if he/she wishes to establish whether drugs, alcohol, weapons, dangerous, or illegal matter, or goods stolen from members of the staff or student body are found therein. All students utilizing the privilege of parking on school grounds have consented to such a search under the terms and conditions of their Parking Permits. All student vehicles parked on school grounds, whether or not a permit has been obtained, may be searched when there is reasonable cause to believe that the items described immediately above may be found therein.
- d. *Possessions and outer garments:* The school administration has the authority to inspect and search the possessions (e.g., purses, gym bags, instrument cases) and outer garments (e.g., jackets, coats, shoes or boots) of students when the school principal has reasonable cause to believe that drugs, alcohol, weapons, illegal or dangerous materials, or stolen goods are likely to be found. A search may be conducted if a school official has reasonable cause to believe that a violation of a school rule or local, state, or federal law has taken place. No probable cause or warrant is required before a search may be conducted. Any such search must be conducted in private by the school principal or an assistant principal, and witnessed by a staff person. School authorities will make a reasonable effort to contact the student's parent/guardian by telephone to obtain his/her consent prior to the search; parents/guardians will be given reasonable opportunity to be present during the search. Searches will be limited to the examination of the contents of a student's possessions and outer garments, although a student may be requested to empty pockets of all contents.
- e. *Search of a student's person:* Should an administrator have reason to believe that a student has drugs, weapons, illegal or dangerous materials, or stolen goods concealed on his/her person, the administrator may conduct a search of the student's person. No such search may be undertaken unless, in the administrator's judgment, there is adequate information based on direct observation by school personnel or reliable information from third parties, that a student is likely to have prohibited material on his/her person.

Prior to commencing a search of a student's person, the student must be told the nature of the information against him/her, and reasonable efforts must be made by school authorities to notify the student's parent/guardian by telephone and permit the parent/guardian the opportunity to be present. The student, or the student's parent/guardian if present, will be asked for consent, the nature of the search will be specified, the rights of the student, and the possible consequences faced by the student will be explained. If consent is refused, the search procedure will be immediately halted, and the matter turned over to the police.

Initial searches of a student's person shall be confined to a pat-down search unless the student specifically

requests that the search proceed with the removal of garments rather than a pat-down search. Male students will be searched only by men and female students only by women. During such a search, procedures to assure the privacy and dignity of the student will be followed.

Should a pat-down search provide reasonable cause to believe that the student has prohibited material concealed upon his/her person, the student will be requested to surrender the materials. If the pat-down search does not reveal any prohibited material, but based on information received, the administrator continues to have reasonable cause to believe there is a strong likelihood that prohibited material is concealed upon the student's person, the administrator may request the student to remove or adjust clothing to the degree necessary to ascertain whether the student does in fact possess prohibited material. Any such search will be conducted with the utmost respect for the student's privacy and dignity.

Should a student, or student's parent/guardian, at any point refuse permission to continue a search, the school authorities will immediately discontinue the search procedure. The student, and parent/guardian, will be informed that unless permission is granted to continue the search, the matter may be turned over to law enforcement officials. Should permission still be withheld, the student will be placed in a supervised area and the police called.

- f. *Emergency exception:* For all types of searches described above, when an administrator has reasonable cause to believe, on the basis of information provided through direct observations by school personnel or others, that a student possesses any weapon or dangerous material which poses an imminent threat to life or property, he/she may authorize an immediate search of the student's person or possessions. In such a case, the student's parent/guardian will be notified by telephone of the search as soon as possible. No physical force may be applied during any search of the student unless there is an immediate threat of imminent danger to persons or property.

- g. *Seizure and surrender of items found:* Unlawful, prohibited, or stolen matter found during the search may be turned over to the police and/or used in school disciplinary proceedings. Items which are used to disrupt or interfere with the educational process may be seized temporarily by school authorities. Such items shall, upon request, be returned to the student or parent or guardian at the end of the school day.

Illegal items (tobacco, alcohol, drugs, firearms, weapons) or other possessions reasonably determined to be a threat to the safety or security of others may be seized by school authorities and at the discretion of the school principal, or his or her designee, may be turned over to the police authorities.

All legal items seized shall, upon request, be made available to the parent or guardian or the student at the end of the school day.

14. *Student surveys:* Teachers or school administrators may conduct surveys of students for the purposes of study, the

Improvement of education, or class assignment. These surveys or questionnaires are governed by the following rules:

A school district, principal or other person in charge of a public school, or teacher in a public school may not administer or permit to be administered in a school, any questionnaire or survey, whether anonymous or not, which inquires into private family affairs of the student not a matter of public record or subject to public observation unless written permission is obtained from the student's parent or guardian (AS 14.03.110). (Included in this restriction are surveys that seek information on the following):

- (1) political affiliations;
- (2) mental and psychological problems potentially embarrassing to the student or the student's family;
- (3) sex behavior and attitudes;
- (4) illegal, anti-social, self-incriminating and demeaning behavior;
- (5) critical appraisals of other individuals with whom the student has close relationships;
- (6) relationships that are legally recognized as privileged, such as those of lawyers, physicians, and ministers;
- (7) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such a program); or
- (8) private family affairs not a matter of public record or subject to public observation. 20 U.S.C. § 1232 (h)(b); AS 14.03.110.

Surveys or questionnaires not seeking information in the categories described above may be administered to students without parental consent. In addition, it is appropriate to require students to complete these surveys.

Inspection by Parents or Guardians of Survey Material: All instructional materials, including teacher's manuals, film, tapes, or other supplementary materials which will be used in connection with any survey, analysis, or evaluation as part of any applicable program shall be available for inspection by the parents or guardians of the children. 20 U.S.C. § 1232(h)(a)

Use of Information Gathered in Student Surveys: Information gathered in student surveys may be disclosed to organizations conducting studies to develop, validate, or administer predictive tests; administer student aid programs; or to improve instruction. This information may be disclosed without parental consent provided the study is conducted in a manner that does not permit personal identification of parents and students to individuals other than those conducting the study. Further, the information must be destroyed when no longer needed for purposes of the study. 34 C.F.R. § 99.31(6)(f)

Types of Sanctions/Disciplinary Actions

Simple discipline: Any disciplinary action against a student other than suspension or expulsion. No simple disciplinary action shall be taken in such manner as to prevent a student from accomplishing specific academic grade, level, or graduation requirement, provided that credit may not be granted for irregular attendance as described in the Secondary and Middle Level Administrative Manual. Simple disciplinary

actions may include the denial of the privilege to participate in school sponsored extracurricular programs, social events and senior graduation ceremony. A student can be subject to such simple disciplinary sanctions in addition to suspension or expulsion.

Prior to the imposition of simple disciplinary action, the student will be given written or oral notice of the charges against him/her, and if he/she denies them, an explanation of the evidence the administrator has, and an opportunity to present his/her side of the case will be granted. This explanation and opportunity to present facts may occur immediately after notice of the charges is given to the student.

When simple discipline involves the denial of the privilege to participate in extracurricular programs, social events and senior graduation ceremony: The school principal shall endeavor to notify the parent/guardian of the student by telephone of the pending charges against the student prior to imposition of this type of simple disciplinary action. The decision of the school principal will be provided in writing to the student and his/her parent/guardian. Simple discipline involving the denial of the privilege to participate in extracurricular programs, including senior graduation ceremony, may be appealed as set forth in Section 5 below.

2. Short-term suspensions: Denial, without a formal hearing, of the right of school attendance either from a single class or any full schedule of classes for a limited period of time not to exceed five (5) school days.

a. **Short-Term Suspension:** A short-term suspension is a suspension ordered for any reason by the school administrator where the disciplinary action will not exceed five (5) school days.

b. Prior to a student being placed on short-term suspension, the student must be given written or oral notice of the charges against him/her, and, if he/she denies them, an explanation of the evidence the administrator has, and an opportunity to present his/her side of the case. This explanation and opportunity to present facts may occur immediately after notice of the charges is given to the student.

c. **Notice to Parent/Guardian:** The school administrator shall endeavor to notify the parent/guardian of the student of the pending suspension by telephone and in writing. The student and/or his or her parent/guardian shall be provided written and/or oral notice of the suspension prior to the time the suspension is to commence, unless notice is not possible prior to suspension because the student's presence poses an immediate or continuing danger to him/herself or other persons or property, or an ongoing threat of disruption of the academic process.

A student may appeal a short-term suspension under the process set forth in Section 5 below. The short-term suspension will be enforced immediately and the student shall remain away from school unless or until an informal hearing is requested. Upon receipt of a hearing request, the suspension will be delayed and the student shall be allowed back in school pending the informal hearing, except as set forth in Section 5 below.

d. A student on short-term suspension is encouraged to contact his or her teachers regarding daily class reading and assignments. A student will be allowed to complete, for

MEMORANDUM

State of Alaska Department of Law

TO: Hon. Karen Perdue
Commissioner
Department of Health and Social Services

DATE: October 20, 1997

FILE NO.: 663-97-0229

Hon. Shirley Holloway
Commissioner
Department of Education

TELEPHONE NO.: 465-3600

FROM: Doug Gardner *DN*
Assistant Attorney General
Oil, Gas & Mining Section - Juneau

SUBJECT: Youth Risk Behavior
Survey

In a memorandum from Commissioner Perdue dated August 20, 1997, the Department of Health and Social Services ("DHSS") expressed concern that ambiguities in AS 14.03.110 might, as a practical matter, prevent DHSS from conducting the 1997 Youth Risk Behavior Survey ("YRBS") and asked for advice from the Department of Law. The YRBS is an anonymous survey of a randomly selected group of Alaska middle school and high school students which asks questions in six subject areas: (1) behaviors that result in unintentional and intentional injuries; (2) tobacco use; (3) alcohol and other drug use; (4) sexual behaviors; (5) dietary behaviors; and (6) physical activities. Commissioner Perdue described the YRBS as a survey conducted through the collaborative efforts of the Alaska Department of Education ("DOE") and DHSS. As part of Commissioner Perdue's request for interpretation of AS 14.03.110, a copy of the 1997 YRBS has been provided to our office.¹

A. Ambiguity in AS 14.03.110

Alaska Statute 14.03.110 provides

Questionnaires and surveys administered in public schools.
A school district, principal or other person in charge of a public school, or teacher in a public school may not administer or permit to be administered in a school a questionnaire or survey, whether anonymous or not, that inquires into private family affairs of the student not a matter of public record or subject to public observation unless written permission is obtained from the student's parent or guardian.²

¹ Commissioner Perdue's memorandum of August 20, 1997, indicated that DHSS implemented the YRBS in 1995 but has not conducted the survey in 1997 because of ambiguities in the interpretation of AS 14.03.110.

² Sec. 1, ch. 23, SLA 1979.

Hon. Karen Perdue, Commissioner
 Hon. Shirley Holloway, Commissioner
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Alaska Statute 14.03.110 requires written permission from a student's parent or guardian only in situations where the survey asks questions about "private family affairs of the student" The phrase "private family affairs of the student" is not defined anywhere in the statute. In 1979, when House Bill 98 (sec. 1, ch. 23, SLA 1979) was signed into law, our office advised that the phrase "private family affairs of the student" was subject to many potential interpretations.³ Since its enactment into law, AS 14.03.110 has never been interpreted by an Alaska court or our office.⁴ In light of the possible interpretations

³ On April 24, 1979, Attorney General Avrum Gross provided Governor Jay S. Hammond with the following concerns regarding the ambiguity in the phrase "private family affairs of the student" in AS 14.03.110:

While the apparent intent of this bill (to protect the family's right to privacy) is laudable, the right to privacy is already guaranteed by the general language of Art. 1, § 22 of the Alaska Constitution. To that extent, the bill may be regarded as superfluous. Apart from the general concept of the bill, we note additional difficulties. While the bill does not address the sanctions, if any, that might be imposed against an educator who violates the provision of the bill, it would arguably subject the educator to liability in tort. Also, the bill makes no attempt to define what may be characterized as "private family affairs of the student."

We have discussed with officials of the Department of Education certain policy objections regarding this bill--in particular the possibility that this bill would undermine legitimate inquiry by school officials into areas such as family health history which could affect other children (e.g., incidence of tuberculosis in the family). Similarly, use of broadly based anonymous surveys of school-age children and youth to determine the frequency of alcohol, drug and child abuse--tools used in determining the efficiency of government programs--would also be precluded by this bill.

Legislative Review Case File, Alaska State Archives, RG03, Box 12241.

⁴ In 1996, Assistant Attorney General Jan Levy provided advice on the comparison between the requirements of AS 14.03.110, 20 U.S.C. § 1232(h) (as amended) (Protection of Pupil Rights) and a recently adopted policy of the Anchorage School Board regarding administration of student surveys. Attorney General File No. 663-97-0229. However, our
 (continued...)

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regarding AS 14.03.110, our office has been requested to provide advice on the meaning of the phrase "private family affairs of the student" contained in the statute. DHSS and DOE need to know whether the 1997 YRBS inquires into "private family affairs of the student" so that you can determine whether written permission from a student's parent or guardian must be obtained prior to administration of the survey.

Your request for assistance in determining the meaning of "private family affairs of the student" in AS 14.03.110 is a question of statutory interpretation. In Alaska, statutory interpretation begins with consideration of the language of the statute construed in the light of the purpose of its enactment. *Konecky v. Camco Wireline, Inc.*, 920 P.2d 277, 281 (Alaska 1996) (quoting *J&L Diversified Enter. v. Municipality of Anchorage*, 736 P.2d 349, 351 (Alaska 1987)). Where a statute is unambiguous and expresses the legislature's intent, and where the legislative history does not reveal any ambiguity, Alaska courts will not modify or extend a statute by judicial construction. *Konecky* at 281 (quoting *Alaska Pub. Employees' Assn. v. City of Fairbanks*, 753 P.2d 725, 727 (Alaska 1988)). If, however, an Alaska court finds some ambiguity in AS 14.03.110, the court will apply a sliding scale approach when interpreting the statute. *Id.* If the court utilizes the sliding scale approach to statutory interpretation, the court will employ the rule that "the plainer the language, the more convincing contrary legislative history must be." *Konecky* at 281 (quoting *State v. Alex*, 646 P.2d 203, 208-09 n.4 (Alaska 1982)). In the end, the purpose of statutory construction "... is to give effect to the intent of the legislature, with due regard for the meaning that the statutory language conveys to others." *City of Dillingham v. CH2M Hill Northwest*, 873 P.2d 1271, 1277 (Alaska 1994).

Reading the language in AS 14.03.110, it is our view that "family" would likely be interpreted as a limit on the types of student affairs that require prior parental permission before a survey can be given to a student. Put another way, the legislature could easily have required prior parental permission for surveys inquiring into any affairs of a student, but, instead, it merely opted to require permission for questions relating to the private family affairs of the student. The meaning conveyed by the term "family" is simply the student's actual observations, opinions, and interaction with other family members. Thus, a student's private family affairs—as opposed to all of the private affairs of the student—is a more limited subset of a student's affairs, and probably would not be given an interpretation to include a student's own private affairs. There is a very strong argument that "private family affairs of the student" in AS 14.03.110 is unambiguous on its face.

However, if a court found that the phrase "private family affairs of the student" was somewhat ambiguous, the court would look to the following legislative history and

⁴ (...continued)

office was not asked to provide an interpretation of the phrase "private family affairs of the student" contained in AS 14.03.110, and thus we expressed no view on that issue.

require convincing legislative intent before the court would accord an expansive interpretation to allow the "private family affairs of the student" to include matters that are simply the student's own private affairs. Accordingly, out of an abundance of caution, we have reviewed the legislative history of AS 14.03.110 to determine how a court engaged in such an interpretation exercise might resolve this matter.

B. Legislative History of AS 14.03.110

House Health, Education and Social Services Committee

House Bill 98 was introduced by Representative Nels A. Anderson on January 30, 1979. Representative Anderson introduced House Bill 98 in response to a survey (Exhibit 1) conducted in the Juneau School District during 1978. Representative Anderson described the need for the restrictions in House Bill 98 before the House Health, Education and Social Services Committee on February 17, 1979:⁵

I have got children in the City and Borough of Juneau School District, and I'm not necessarily too happy about how deeply they pry into my private home. I don't think it's any of the district's business and neither did I feel it was any of the Dillingham School District's business to get into the some of the areas that they did. On page 4, question number 13, "in the past year, which of the persons listed below moved in or out of your home." Then they get into, well on page 7 you have the statement, "Am I often left without an adult at home, yes or no, if yes is it usually overnight, over a weekend or for several days?" "Have police been helpful to me?" "My parents are at home, yes or no, once or twice, sometimes, always, not." "My parents or foster parents, argue." "My parents or foster parents fight." "I have needed counseling about pregnancy and abortion." "I need more information about birth control and venereal disease." "I have needed more information about alcohol and drugs." "Some of my friends have a problem with alcohol." It goes on and on and gets into whether or not your mother and father use alcohol excessively.

The intent is to prohibit this kind of survey from being administered unless written permission is obtained from the student's

⁵ We note that generally statements made by a sponsor of a bill are sometimes cautiously considered as indicative of legislative intent. *Alaska Public Employees' Association v. State*, 525 P.2d 12 (Alaska 1974). Thus, Representative Anderson's statements as the sponsor of House Bill 98 regarding the scope of the bill require consideration.

parent or guardian. And this may prove to be, or may be looked at as an excessively prohibitive bill, but I think it does give the school district and the principals and/or the administration the right to give this but only if they have the permission of the student's parent or guardian.⁶

In response to Representative Anderson's statement regarding the intent of House Bill 98, a committee member observed that some of the questions might be permissible notwithstanding the proposed restrictions in the bill. Further, the committee member asked Mr. Anderson whether the bill was designed only to restrict questions about inquires made into the private family affairs of the student without the permission of a parent or guardian. In response, Representative Anderson said "[t]hat's the way the bill reads now."⁷

In addition to Representative Anderson's testimony, Mr. Terry Thetford⁸ testified at Representative Anderson's invitation in support for House Bill 98. Mr. Thetford testified that House Bill 98 was designed to prevent school districts from asking questions:

[O]f our children that evaluate how we raise our children. Evaluate how we act in our homes. Evaluate how we interact in our homes. You can't do that. You can't invade our privacy.⁹

Mr. Thetford went on to testify,

⁶ House Health Education and Social Services Committee, Recorded Testimony, Alaska State Archives, RG 405, February 17, 1979.

⁷ *Id.*

⁸ Mr. Thetford was introduced by Representative Anderson as a member of the public who supported House Bill 98 and a member of a special interest group opposed to a student survey conducted in 1978 in the Juneau School District. Generally statements of a member of a special interest group in support of legislation are considered unreliable aids when searching for legislative intent. *See generally*, 2A Norman J. Singer, *Sutherland Statutory Construction*, § 48.11 (Fifth Ed. 1992). However, to the extent that Mr. Thetford's comments are consistent with and support Representative Anderson's comments, his testimony provides some additional insight into legislative intent.

⁹ *Id.*

Okay, then you start asking questions that delve right into family life. When you get past the front door of that home where people can't see from the street, people have no right to know. Unless someone is being hurt, privacy starts at that front door. Okay, and asking more questions like if your parents are divorced. How many people live in your house are related to you, etc., etc. Okay then you start asking questions that pertain to family life, asking children, fifth, sixth, seventh, eighth grade, through twelfth--to evaluate and make judgments on how well their parents take care of them. Asking how often you are left alone without adult supervision. How if you visit your parents, how much your mother and father drink. How can children of sixth and seventh grade be able to evaluate whether their parents drink too much?

It's a no money bill. It doesn't cost the state a thing. All it does is protect our privacy from our front door in. It does not allow the school, or any other, hopefully--you can add the language--any other governmental agency to pry into our home life by a shotgun approach, by just taking children out of the room and asking them these questions.¹⁰

2. Senate Health, Education and Social Services Committee

Again, on March 28, 1979, Representative Anderson described the impetus for House Bill 98 in testimony before the Senate Health Education and Social Services Committee:

The bill is quite simple. I introduced this bill in response to what I consider to be a problem area in the administration of questionnaires and surveys. This came out of controversy that erupted in Juneau last year and would have caused some problems in the Dillingham School District, but I wrote a letter to the school board and asked them not to administer a survey that I felt inquired into private family affairs that are not any of the state's business or should not be a matter of public record; unless permission is obtained from the student's parent or guardian.¹¹

¹⁰ *Id.*

¹¹ Senate Health Education and Social Services Committee Bill File, Recorded Testimony from March 28, 1979, Alaska State Archives R. 405, SR 458, Box 6568.

Representative Anderson also testified that he objected to the survey administered in Juneau because it lacked confidentiality. Representative Anderson testified that since the survey asked students where they lived (by requiring them to identify the area in the City and Borough of Juneau), what school a student attended, the student's age, sex, ethnic group, grade, length of residency in Juneau, number of rooms in a student's family's home, it would not be difficult to determine the individual identity of each student who participated in the survey.¹²

Representative Anderson concluded his remarks, and then again introduced Mr. Terry Thetford as a supporter of House Bill 98. Mr. Thetford testified that during 1978 he was a plaintiff in a lawsuit against the Juneau School District opposing the school district's survey. Mr. Thetford provided the following remarks about the purpose and scope of the bill:

But what really incensed us was that here was another instance where a government entity, be it a school district or anyone else, was able to invade a person's domicile without his consent. Basically just opening the door and walking around looking in the drawers.¹³

Mr. Thetford appeared to object to all questions on the survey he described in categories of "sexual activities of the youth" and "abstract questions about family life," including questions about "how well your parents took care of you" and "how much they drank." However, in his closing remarks, Mr. Thetford noted in summary:

The bill doesn't prevent a survey from being taken, all it says is that if a survey is going to be given that pries into family life, the parents have to give consent. It's not saying something can't be done. Let's put the control back in the parents' hands; they are responsible for those children until they reach the age of majority. Let them be all the way responsible; don't let them just be responsible where it is convenient. When it comes to the home, the state has no business.¹⁴

The bill passed out of the committee without any further remarks by committee members regarding the definition of the term "private family affairs of the student."

¹² *Id.*

Id.

Id.

c. Definition of Private Family Affairs of the Student

The legislative history of House Bill 98 provides no definitive answer to what constitute "private family affairs of the student." However, the legislative history indicates that the legislature's intent was to limit questions that pry into the student's *private family life*, rather than survey questions which merely ask the student about the *student's own private affairs*. Representative Anderson and Mr. Thetford testified the intent of the bill was to prevent student surveys that ask questions about intra-family relationships, attitudes, and behaviors that are not of public record or subject to public observation. In short, they both stated any questions that go beyond the "front door" of the family home require prior parental permission.

In 1979, when House Bill 98 was forwarded to Governor Hammond for signature, the Attorney General interpreted the restriction in the bill to prohibit all "broad based anonymous surveys of school-age children and youth to determine the frequency of alcohol, drug and child abuse"¹⁵ The attorney general's advice was not based on a thorough review of the legislative history included in this memorandum.

With the benefit of a thorough review of the legislative history of AS 14.03.110, it is our view that the term "private family affairs of the student" in AS 14.03.110 includes only those questions that are reasonably calculated to lead to information about a student's intra-family relationships and conduct within a student's family home that is not a matter of public record or subject to public observation. Had the legislature intended to prohibit surveys inquiring into private student affairs, it would have used a more inclusive phrase such as "that inquires into the private affairs of the student."

This interpretation is based on the meaning of the statute on its face and the previously described testimony. In addition, we base our interpretation on a long-standing tenet of statutory interpretation to construe a statute to give effect to all provisions and words so that no part of the statutory language is ignored or rendered superfluous. *Peninsula Marketing Assn. v. Rosier*, 890 P.2d 567, 573 (Alaska 1995); 2A Norman J. Singer, *Sutherland Statutory Construction*, § 46.06 (5th ed. 1992). Applying this tenet to AS 14.03.110, a central question is the effect of the legislature's inclusion of "family" to modify the "private . . . affairs of the student."

Some may argue that the legislature intended to prohibit the questions in each of the 1997 YRBS categories since these are the types of discussions parents and children *might* have at home. However, the legislature was careful to qualify and narrow "private" by adding "family," and to specifically state that questions which pry beyond the front door

¹⁵ See *supra* note 3.

of the student's family home cannot be asked without prior parental permission.¹⁶ Some parents may argue that a student's dietary habits, drug and alcohol use, and other activities are family matters. That argument might be based on a parent's desire to talk about these issues with a child. Or, for example, some parents may consider what their children eat and drink to be within the family domain. It could be argued that a student's dietary habits reflect a family's diet.

We cannot predict with accuracy how a court would resolve this issue with regard to each category on the proposed 1997 YRBS. However, we believe the best answer to the interpretation of AS 14.04.110 is that as long as survey questions are limited to the student's own activities and the survey does not ask the student questions about parents or other activities occurring within a student's home, the survey does not impermissibly invade the domain of the student's private "*family*" affairs.

It is our view, based on a through review of the legislative history, that the legislature did not intend AS 14.03.110 to prohibit government agencies from asking questions about the student's own private affairs such as the questions posed by DOE and DHSS in the 1997 YRBS involving conduct outside of the home including: (1) behaviors that result in unintentional and intentional injuries; (2) tobacco use; (3) alcohol and other drug use; (4) sexual behaviors; (5) dietary behaviors; and (6) physical activities. If a student chooses to answer questions about *the student's own private affairs*, the student may do so, or if not, simply return the YRBS blank.

¹⁶ Only one similar statute has been located in a search of statutes in other states to determine if a statute similar to AS 14.03.110 exists. In Colorado, C.R.S.A. § 26-4-531(4)(a)(II)(A) provides:

Any health questionnaire or form related to services funded in part through this section shall only relate to the student's personal health, habits, or conduct and shall not include questions concerning the habits, or conduct of any other member of the student's family.

C.R.S.A. § 26-4-531(4)(II)(A) appears to explicitly draw the distinction between a student's own private affairs and the private affairs of the student's family. The legislative history of AS 14.03.110 was not based on any other state statute, and certainly not on C.R.S.A. § 26-4-531(4)(a)(II)(A). However, the Colorado statute does illustrate a way of drawing a distinction between the student's own private affairs and the private family affairs of the student that is similar to the distinction set out in the legislative history of AS 14.03.110.

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We have reviewed all of the questions in the middle school (Exhibit 2) and high school (Exhibit 3) versions of the 1997 YRBS. It is our view that with the exception of two questions, all questions in the 1997 YRBS are defensible pursuant to our analysis of AS 14.03.110 and may be submitted to students without prior written permission from a student's parent or guardian. However, Question 34 on the middle school survey and Question 55 on the high school survey--which are identical--ask: "Have you ever talked about AIDS or HIV infection with your parents or other adults in your family?" It is our view that these questions probe a student for information about intra-family relationships. These are the types of questions that seek information about the private *family* affairs of the student and require prior written permission from the student's parent or guardian pursuant to AS 14.03.110. You may choose to either drop these questions from the surveys or seek prior written parental permission before administering the surveys with these questions.

If additional YRBS surveys are conducted in years following 1997, your department should provide us with copies of proposed questions so we may review the questions with your staff for compliance with AS 14.03.110.

DDG/bap

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MEMORANDUM

State of Alaska
Department of Law

TO: Hon. Shirley Holloway, Ph.D.
Commissioner
Department of Education

DATE: December 18, 1996

FILE NO.: 663-97-0229

TELEPHONE NO.: 465-3600

FROM: 
Janice Gregg Lary
Assistant Attorney General
Human Services Section

SUBJECT: Consent for student
surveys

Through Dr. Nancy Buell, you provided me with a copy of the Anchorage School District's policy on student surveys. You asked that I review it, commenting on whether it is more restrictive than state and federal laws governing student surveys.

Alaska's student survey statute provides as follows:

A school district, principal or other person in charge of a public school, or teacher in a public school may not administer or permit to be administered in a school a questionnaire or survey, whether anonymous or not, that inquires into private family affairs of the student not a matter of public record or subject to public observation unless written permission is obtained from the student's parent or guardian.

AS 14.03.110. This statute applies to any survey or questionnaire sought to be administered to students in any public school in the state. In our view, the written permission required by this statute should be taken at face value; that is, the school must obtain written permission.

A 1994 amendment to 20 U.S.C. § 1232(h) (Protection of Pupil Rights) provides as follows:

No student shall be required, as part of any applicable program, to submit to a survey, analysis, or evaluation that reveals information concerning

- (1) political affiliations;
- (2) mental and psychological problems potentially embarrassing to the student or his family;
- (3) sex behavior and attitudes;
- (4) illegal, anti-social, self-incriminating and demeaning behavior;

- (5) critical appraisals of other individuals with whom respondents have close family relationships;
- (6) legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers; or
- (7) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program), without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of an unemancipated minor, without the prior written consent of the parent.

Regulations promulgated under this statute appear at 34 C.F.R. § 98, and clarify that the restrictions apply only to programs administered by the Secretary of Education. The federal law does not place restrictions on other surveys.

The Anchorage School District (ASD) has adopted its own policy on student surveys, borrowing language from both the state statute and the federal regulations. The policy begins as follows:

Teachers or school administrators may conduct surveys of students for the purposes of study, the improvement of education, or class assignment. These surveys or questionnaires are governed by the following rules[.]

The "rules" include, first, the full text of AS 14.03.110 (except that the policy uses "which" where the statute uses "that"). Next, the ASD policy identifies eight subjects that are prohibited for surveys without parent consent, seven of which are taken directly from the federal government's list, and one of which is a restatement of the state's prohibited subject (private family affairs not a matter of public record or subject to public observation). The ASD policy may have been an attempt to give clearer guidance to its employees on what "private family affairs" are, as referenced in the state's statute, using the federal regulations as guidelines. On the other hand, it may have sought additional restrictions beyond those required by state law, and may have determined that the list of federal topics provided those restrictions. The Anchorage School Board would be the best source on what it intended by adopting its student survey policy.

1. Is the Anchorage School District's policy more restrictive than the federal government's policy? The answer is yes, in that it applies to all student surveys.* The federal policy applies only to surveys conducted under or as a part of a program administered by the Secretary of Education. (The programs covered are identified at 34 C.F.R. § 98.1.)

2. Is the Anchorage School District's policy more restrictive than the state's policy? This question is harder to answer. AS 14.03.110 requires written parent consent prior to administration of a survey that "inquires into private family affairs of the student[.]" This phrase has not been clarified or made specific by the State Board of Education in regulation, and we have found no reported court decisions or attorney general's opinions interpreting the statute. Thus, we cannot provide you with a definition of what constitutes "private family affairs." However, each of the seven subjects identified in federal regulation and contained in the ASD's policy is a subject that, arguably, is within the private family affairs of a student. Thus, we cannot say with certainty whether the ASD policy is more restrictive than the state statute, which arguably prohibits inquiry into the same subjects without parent consent.

When then Governor Jay Hammond signed this bill into law, he transmitted it to the Speaker of the House with a letter indicating his reservations about the bill. He noted that

[t]his bill would prevent school or public health workers from inquiring into a student's family history of areas such as communicable diseases, even when the information could be in the public's compelling interest. Similarly, use of broadly based anonymous surveys of school-age children and youth to determine the frequency of alcohol, drug, and child abuse -- tools used in determining the efficiency of government programs -- would also be precluded by this bill.

It is clear from this letter that the Governor understood the measure as one that would restrict the government's ability to

* The Anchorage policy permits "surveys of students for the purposes of study, the improvement of education, or class assignment," subject to the rules set out in the policy. It is somewhat unclear whether surveys that do not fall within those categories may be conducted at all, and what rules would apply if they may be conducted. We are not in a position to interpret the district's intent in selecting that language.

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gather information that could be for the public good. Of course the law does not prohibit administering such a survey where a parent gives written permission.

Additionally, the ASD policy borrows from the federal regulations with respect to availability of survey materials for inspection. Both the ASD and the federal regulations require availability. Alaska's statute does not so specify. In this regard, the ASD policy could be viewed as more restrictive of government action, but more expansive of parent rights than Alaska's statute. However, AS 14.03.110 probably contemplates that there be some measure of disclosure or inspection available to enable a parent to decide whether to give consent to a student's participation.

Dr. Buell informed me that the Section of Epidemiology in the Division of Public Health has expressed concern over the potential effect of nonparticipation of the ASD in the Youth Risk Behavior Survey that the division hopes to administer. We have not been provided with information regarding the content of the Youth Risk Behavior Survey, and express no view on whether its administration in the schools requires consent under the ASD policy, AS 14.03.110, or both. Apparently those who have seen the survey believe that it inquires into subjects prohibited by the ASD policy. If that is so, I strongly encourage you to determine whether the survey "inquires into private family affairs of the student not a matter of public record or subject to public observation." If it does, AS 14.03.110 prohibits administration of the survey in any district in the state unless written permission is obtained from the student's parent or guardian.

Please do not hesitate to contact me if you need additional assistance regarding this issue.

JGL:prm

cc: Dr. Nancy Buell, Director, Division of Teaching & Learning Support