

CONCLUSION

This action began more than 20 months ago as an attempt to vindicate plaintiffs' constitutional right to attend school in 145 communities which do not have local secondary schools. Since initiation of this suit, more than two full school years have come and gone while thousands of secondary students have been denied this fundamental right. For most of the plaintiffs this has meant attending school away from home; but for many it has meant two more years without education beyond the elementary grades. The plaintiffs -- and our society -- cannot afford further delay.

The plaintiffs' claims are well founded in law. The Alaska Constitution endows them with the fundamental right to attend school. They are legally entitled to exercise that right in the community where they live on three separate grounds: (1) The State's failure to provide schools within daily access of their homes effectively abridges their Article VII rights without any demonstrated compelling justification; (2) The State's provision of local day schools to all Alaskan school children except plaintiffs violates their Article I, Section 1, equal protection rights; and (3) Unambiguous regulations of the State Board of Education, properly based on statutory authority, require this provision of local secondary schools.

In the face of these compelling claims, the lower court's dismissal of Count I with prejudice is reversible error. Its meaning -- that no state of facts could be found to exist that

could sustain plaintiffs' claim -- is demonstrably wrong. Plaintiffs respectfully urge this Court to reverse that error. Moreover, this Court should grant summary judgment to plaintiffs. The court below, in captioning its dismissal an Order Granting Summary Judgment, implicitly indicated that there is no genuine issue as to any material fact. Civil Rule 56(c). Plaintiffs agree. It is undisputed that the plaintiffs live in villages where there are more than eight children eligible to attend school and where defendants have provided no secondary schools. Plaintiffs' right to attend school has thereby been abridged. Judgment should be rendered in favor of plaintiffs on Count I.

It has been said by defendants, and will doubtless be said again, that granting plaintiffs relief would place a burden on the State's education system and change the manner in which secondary schools have been provided -- or not provided -- to rural native school children. This is true. But this is a burden and a change that is compelled by the Constitution itself. It is a change that will bring to thousands of native children more equal opportunities, not only in education, but in all the broader aspects -- economic, social, and political -- of citizenship and life.

It is no answer to say that the law has never been enforced that way before. As this Court wrote so eloquently in Baker v. City of Fairbanks, 471 P.2d at 396:

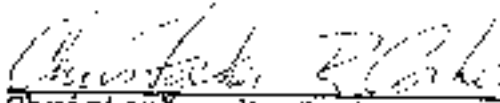
We feel that the argument from history is not determinative because what was practical historically is not necessarily adequate to the needs of our times. To look only to history would deny a progressive development of our legal institutions. [emphasis added].

What this Court wrote concerning justice in Alvarado v. State, 486 P.2d at 905-906, applies with no less force to education today:

It is of paramount importance that the benefits conferred by the Constitutions of the United States and Alaska be extended with an even hand to the people of our state. When a large segment of the population lives in towns and villages scattered throughout the reaches of the state, we cannot afford to succumb to the temptation of convenience by allowing the machinery of justice to become inflexibly entrenched within the enclaves of our major cities. Instead we must tailor our system of justice to meet the needs of the people. It is our judicial system which must take the initiative to assure compliance with the mandates of the Constitution; we cannot simply neglect or ignore communities of individuals located in remote areas of the state. Justice must be made available to all of the people of Alaska.

For these reasons, plaintiffs urge the reversal of the lower court's dismissal of this claim and the granting of their Motion for Summary Judgment in order to vindicate their rights to attend local secondary schools.

Respectfully submitted,


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