

IN THE SUPREME COURT OF ALASKA

MOLLY HOOTCH, minor, by her father
and next friend JAMES HOOTCH; FRANK
KAMEROFF, JR., CAMMY KAMEROFF, LOREN
KAMEROFF, and ELLEN KAMEROFF, minors,
by their father and next friend FRANK
KAMEROFF; AGATEA KEYS; VIRGINIA
OKTOYAK, minor, by her father and
next friend BERNARD OKTOYAK; THERESA
HORN, minor, by her mother and next
friend PERPETUA HORN; URSALA TRADER;
IDA TRADER and LINDSAY TRADER, minors,
by their father and next friend ALEX
TRADER; MARTINA TRADER and PATRICK
TRADER, minors, by their father and
next friend WILLIAM TRADER; MUCILLE
EVON and ERNEST EVON, minors, by
their father and next friend HARRY
EVON; MARY ANN ANDREW; HERBERT PETER,
minor, by his father and next friend
DAVID PETER; CHRISTINE ATTI and
JAMES ATTI, minors, by their father
and next friend PETER ATTI; ENOCH
BEAVER, minor, by his father and
next friend ALBERT BEAVER; STEPHANIE
PHILLIP and DORIS PHILLIP, minors, by
their father and next friend ROLAND
PHILLIP; WILLIAM JOHN and ELSIE JOHN,
minors, by their father and next
friend PETER JOHN; ELIZABETH FRIEND,
minor, by her father and next friend
OTTO FRIEND; LORRAINE BEAVER, minor,
by her father and next friend OWEN
BEAVER; ELSIE BLACK, minor, by her
mother and next friend MARY BLACK; and
ELSIE AGNES MUTE, minor, by her father
and next friend, FRANK MUTE; on behalf
of themselves and all others similarly
situated,

Appellants,

vs.

ALASKA STATE-OPERATED SCHOOL SYSTEM,
a State Corporation; KATHERINE T.
HURLEY, JAMES N. KANAMAKER, JOHN
BORBRIDGE, JR., MARIE L. MCDONNELL,
BETTY J. CUDDY, FRANKLIN M. KING, JR.,
RUTH McLEAN, as members of the State
Board of Education of the State of
Alaska; MARSHALL L. LIND, as Commis-

FILE NO. 2157

SUPERIOR COURT NO. 72-2430

sioner of Education; NATHANIEL P.
COLE, as Director of Administra-
tive Services, Department of
Education; JAMES M. HARPER, as
Director of Regional Schools and
Boarding Home Program, Department
of Education; STANLEY FRIESE, as
Superintendent, Alaska State-
Operated School System,

Appellees.

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Filed May 16, 1974, in
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CONSTITUTIONAL AND STATUTORY PROVISIONS

Alaska Constitution

Article I, Section 1. Inherent Rights. This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

Article VII, Section 1. Public Education. The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

Alaska Statutes

AS 14.03.010. Establishment of school system. There is established in the state a system of public schools to be administered and maintained as provided in this title.

AS 14.03.060. Elementary, junior high, and secondary schools. (a) An elementary school consists of grades kindergarten through grade eight or any appropriate combination of grades within this range.

(b) A secondary school consists of grades seven through 12 or any appropriate combination of grades within this range. The establishment of one or two grades beyond the 12th grade is optional with the governing body of the school district.

(c) Grades seven through eight, nine, and ten or any appropriate combination of grades within this range may be organized as a junior high school.

(d) This section does not prevent a high school from issuing a diploma to a student who has completed the 12th grade.

AS 14.03.070. School age. A child who is six years of age or who will become six years of age before November 2 following the beginning of the school year, and who is under the age of 20 and has not completed the 12th grade, is of school age.

AS 14.03.080. Free education. (a) A child of school age is entitled to attend public school without payment of tuition during the school term in the school district in which he is a resident subject to the provisions of AS 14.14.110 and AS 14.14.120.

(b) A person over school age may be admitted to the public school in the school district in which he is a resident at the discretion of the governing body of the school district. A person over school age may be charged tuition by the governing body of the school district.

(c) A child under school age may be admitted to the public school in the school district of which he is a resident at the discretion of the governing body of the school district if the child meets minimum standards prescribed by the board evidencing that the child has the mental, physical and emotional capacity to perform satisfactorily for the educational program being offered.

(d) A child who is five years of age shall be admitted to a school in the district of which he is a resident if immediately before he became a resident of the district, he was legally enrolled in the public schools of another district or state.

AS 14.07.010. Department of Education. The Department of Education includes the commissioner of education, the state Board of Education, and the staff necessary to carry out the functions of the department.

AS 14.07.020. Duties of the department. The department shall

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

(2) study the conditions and needs of the public schools of the state and adopt or recommend plans for the improvement of the public schools;

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

(4) prescribe by regulation a minimum course of study for the public schools;

(5) establish, in coordination with the Department of Health and Welfare, 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, private, and denominational schools which meet accreditation standards prescribed by regulation by the department;

(7) prescribe by regulation, after consultation with the Department of Health and Welfare, standards that will assure healthful and safe conditions in the public schools of the state;

(8) in cooperation with the Department of Health and Welfare, exercise general supervision over public and private preclmentary schools and over the educational component of nurseries as defined in AS 47.35.080(4); preelementary schools in this paragraph means schools for children ages three through five years when the schools' primary function is educational.

AS 14.07.030. Powers of the department. The department may

(1) establish, maintain, govern, operate, discontinue, and combine area, regional, and special schools;

(2), (3) and (4) Repealed Sec. 1 ch 265 SLA 1970.

(5) enter into contractual agreements with the Bureau of Indian Affairs to share boarding costs of secondary school students;

(6) provide for citizenship night schools when and where expedient;

(7) provide for the sale or other disposition of abandoned or obsolete buildings and other state-owned school property;

(8) prescribe a classification for items of expense of school districts;

(9) acquire and transfer personal property, acquire real property, and transfer real property to federal agencies, state agencies, or to political subdivisions;

(10) enter into contractual agreements with school districts to provide more efficient or economical educational services;

(11) provide for the issuance of elementary and secondary diplomas to persons not in school who have completed the equivalent of an eighth or twelfth grade education, respectively, in accordance with standards established by the department;

(12) exercise disapproval power under AS 14.03.100.

AS 14.07.060. Promulgation of regulations. The board shall promulgate regulations which are necessary to carry out the provisions of this title. All regulations shall be promulgated under the Administrative Procedure Act (AS 44.62).

AS 14.07.070. Withholding state funds. No state funds may be paid to a school district or teacher who fails to comply with the school laws of the state or with the regulations promulgated by the department.

AS 14.07.075. Creation. There is created at the head of the Department of Education a Board of Education consisting of seven members.

AS 14.08.010. Purpose. (a) It is the purpose of secs. 10 - 150 of this chapter, in creating the Alaska state-operated school system to provide the public education in the unorganized borough.

(b) Secs. 10 - 150 of this chapter do not prohibit an organized borough, city, or village, or a settlement in an unorganized area of the state from becoming part of or being formed into an organized subdivision authorized by law.

AS 14.08.050. Authority of the board of directors. (a) The board of directors has exclusive management and control of all state-operated school matters associated with the state's program of education at the elementary and secondary levels subject to the state laws and the regulations promulgated by the state Board of Education.

AS 14.08.090. Powers and duties of the board of directors. The board of directors shall

(1) develop a philosophy of education, principles, and goals for the state-operated school system;

(2) select and employ the director of education for state-operated schools subject to the approval of the governor;

(3) approve the employment of the professional administrators, teachers, and nonprofessional administrative personnel necessary to the operation of the state-operated schools;

(4) establish the salaries to be paid the director of education and its regularly employed, certificated staff members provided the director's salary is subject to the approval of the governor;

(5) promulgate rules and regulations covering organization, policies, and procedures, and have printed copies available to all personnel;

(6) initiate questions of policy for consideration and report by the director of education, and pass upon the recommendations of the director in matters of policy, appointment or dismissal of employees, salary schedules or personnel regulations, and other matters pertaining to the welfare of the schools;

(7) require reports from the director concerning conditions of efficiency and needs of the schools, and take steps to appraise the effectiveness with which the schools are achieving the educational purposes of the school system;

(8) submit an annual operational budget to the governor for inclusion in the regular state budget;

(9) before October 1 of each year, cause the school accounts for the year ending the preceding June to be audited by a certified accountant, and immediately afterwards file a certified copy of the audit report with the commissioner;

(10) designate the administrative employees authorized to direct disbursements from the school funds of the board of directors;

(11) submit such reports as the commissioner may prescribe for all school districts;

(12) establish, maintain, operate, discontinue, and combine state-operated schools where it considers necessary;

(13) provide for the construction, purchase, rental, maintenance, and equipment of the necessary school buildings or classrooms for the state-operated schools;

(14) pay tuition and boarding or transportation costs of secondary school students in cases where the establishment of state-operated secondary schools is unsound for economic or educational reasons.

AS 14.12.010. Districts of state public school system. The districts of the state public school system are as follows:

(1) each first, second, and third class city in the unorganized borough is a city school district;

(2) each organized borough is a borough school district;

(3) the area outside organized boroughs and outside first, second, and third class cities is the state-operated school district.

AS 14.12.020. Support, management, and control.

(a) Operation of the state-operated school district is under the management and control of the board of the state-operated schools.

(b) Each borough or city school district shall be operated on a district-wide basis under the management and control of a school board.

(c) The legislature shall provide the state money necessary to maintain and operate the state-operated school district. The borough assembly for a borough school district, and the city council for a city school district, shall provide the money which must be raised from local sources to maintain and operate the district.

AS 14.14.060. Relationship between borough school district and borough. * * *

(g) State law relating to teacher salaries and tenure, to financial support, to supervision by the Department of Education and other general laws relating to schools, governs the exercise of the functions by the borough. The school board shall appoint, compensate, and otherwise control all school employees and administration officers in accordance with this title.

AS 14.14.065. Relationship between city school district and city. The relationships between the school board of a city school district and the city council and executive or administrator are governed in the same manner as provided in sec. 60 of this chapter [AS 07.15.330] for the school board of a borough school district and the borough assembly and executive or administrator.

AS 14.14.110. Cooperation with other districts.

When necessary to provide more efficient or more economical educational services, a district may cooperate or the department may require a district to cooperate with other districts, state-operated schools, or the Bureau of Indian Affairs in providing

educational services or in establishing boarding and tuition arrangements, arrangements for the exchange of pupils or teachers, or other similar arrangements. However, if a cooperative arrangement requires pupils to live away from their usual homes, the school board shall provide classes within the attendance area when there are at least eight children eligible to attend elementary and secondary school in the attendance area.

AS 14.14.120. Inoperative district. (a) When there are fewer than eight children eligible to attend elementary and secondary school in a district, the school board may declare the district inoperative for that school year.

(b) During the school year in which a district is inoperative, the school board shall perform those functions necessary to preserve the financial integrity of the district to preserve the property and assets of the district, and to otherwise insure against disruption of the continuity of the district business.

(c) An inoperative school board shall, if practicable, pay the tuition and boarding costs necessary to enable the school age children within the district to attend school in another district. If a child in an inoperative school district is not attending school in another district, the department shall provide correspondence courses and other materials and charge the school board of the inoperative district an amount equal to the actual cost to the department.

(d) The terms of the office of a school board are not affected by a declaration that the district is inoperative. However, new board members shall not be elected during the time a district is inoperative. In the event more than three terms expire during the time a district is inoperative the functions of the school board shall be assumed by the assembly or council until the district become operative. When the district becomes operative an expired school board term shall be filled by the assembly or council until the next regular school election when a school board member shall be elected to serve the balance of the term.

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

(b) This section does not apply if a child

(1) is provided an academic education comparable to that offered by the public schools in the area, either by attendance at a private school in which the teachers are certificated according to AS 14.20.020 or by tutoring by personnel certificated according to AS 14.20.020;

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

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

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

(5) is temporarily ill or injured;

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

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

(8) is excused in writing signed by a majority of the members of the school board of a district or by the director of state-operated schools for a child in such a school, or

(9) has completed the 12th grade.

AS 14.30.020. Violation. A person violating sec. 10 of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 or more than \$200, plus the cost of prosecution, and may be imprisoned until the fine and costs are paid or until he has served one day for every \$2 of the fine and costs, at which time the fine and costs are automatically discharged. Each unlawful absence is a violation and if an absence is extensive there is a new violation each time five consecutive days of the absence elapse. The court may suspend sentence, stay or postpone enforcement of execution, or release from custody a person found guilty upon the conditions

which are in the best interests of the child. In any event, at the expiration of the school year, the person shall be released and discharged from all penalties provided by this section.

AS 14.50.020. Definition of public schools for purposes of Statehood Act. Public schools, for the purpose of Public Law 85-568, 85th Congress, Second Session, includes public elementary schools, public high schools, the University of Alaska and other public educational institutions which may be established. Nothing in this section includes schools for Alaska aborigines under the control of the federal government and which are administered and supervised through the Department of the Interior or the United States Department of Health, Education, and Welfare.

AS 14.60.010. Definitions. As used in this title, unless the context otherwise requires,

(1) "public schools" include elementary schools, high schools, citizenship night schools for adults, and other public educational institutions which may be established; however, nothing in this title includes schools for Alaska Natives under the control of the federal government and administered and supervised through the Bureau of Indian Affairs;

AS 44.62.030. Consistency between regulation and statute. If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

AS 44.62.060. Approval and filing. (a) An agency shall submit a regulation, amendment, or order of repeal to the Department of Law before transmitting it to the secretary of state for filing (1) before adoption and at the time notice of proposed action is given, and (2) after adoption if the adopted regulation, amendment, or order of repeal deviates from the proposed action.

(b) Within 10 days after receipt of the regulation, amendment, or order of repeal, the Department of Law shall write an opinion to the agency advising it on the validity of the regulation, amendment, or order of repeal adopted, on the correctness of the citation of statutory authority required by Sec. 40(3) of this chapter, and on the clarity of the regulation, amendment, or order of repeal adopted. In the opinion, the Department of Law shall recommend changes, if changes are needed, to make the regulation, amendment, or order of repeal valid or to increase its usefulness.

(c) The agency shall transmit a copy of the opinion to the secretary of state at the same time it submits a copy of the affected regulation, amendment, or order of repeal to him for filing.

(d) The secretary of state shall not file a regulation, amendment, or order of repeal until he receives both a copy of the regulation, amendment, or order of repeal required by Sec. 40 of this chapter and an opinion of the Department of Law indicating that the regulation, amendment, or order of repeal is authorized by statute. The secretary of state shall examine each regulation, amendment, or order of repeal transmitted to him for filing and determine whether or not it complies with the requirements prescribed by the legislative council under Sec. 130(b) of this chapter. This section shall not pertain to emergency regulations.

Alaska Administrative Code

4 AAC 06.020. SECONDARY EDUCATION. (a) Every child of school age shall have the right to a secondary education in his community of residence, whether in a city district, a borough district, or the state-operated school system.

(b) This section does not apply if a child

(1) has daily access to a secondary school by being transported a reasonable distance in accordance with pupil transportation regulations;

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

(3) is in the custody of a court or law enforcement officials;

(4) has been suspended or denied admittance according to Section 45 of Chapter 30, Alaska Statutes.

4 AAC 06.025. STANDARDS FOR SECONDARY EDUCATION PROGRAM LEVELS. (a) The Minimum Standards for Offering Secondary Education, first edition, dated 11/4/71 are adopted and shall constitute the minimum guidelines for offering secondary programs. Copies of the standards may be obtained by writing Department of Education, Pouch F, Juneau, Alaska 99801.

(b) Nothing in this chapter shall exclude a district from establishing boarding programs on a district-wide basis to enable students to obtain a more comprehensive education than provided in the Minimum Standards.

(c) Nothing in this chapter shall preclude enrollment in special education programs as provided in AS 14.30.180 - 351.

4 AAC 06.027. ESTABLISHMENT OF ATTENDANCE AREAS.

(a) The board may establish attendance areas without respect to district lines.

(b) Pupils may be required to attend schools in other districts, subject to the provisions of 4 AAC 06.020, when, in the judgment of the commissioner, the best interests of the state will be served. Either the district of residence or the district named as the attendance area may appeal the commissioner's decision to the state board. The decision of the state board will be final.