

THE SUPREME COURT OF THE STATE OF ALASKA

MOLLY HOOTCH, minor, by her father
and next friend JAMES HOOTCH; FRANK
KAMEROFF, JR.; CAMMY KAMEROFF, LORENE
KAMEROFF, and ELLEN KAMEROFF, minors,
by their father and next friend FRANK
KAMEROFF; AGATHA KEYES; 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; LUCILLE
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 M. WAGAMAKER, JOHN
BORRIDGE, JR., MARIE L. McDOWELL,
JETTE 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-

SUPREME COURT FILE NO. 2157
SUPERIOR COURT NO. 74-2450

sioner of Education; NATHANIEL W.)
COLE, as Director of Administrative)
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)
_____)

BRIEF OF APPELLEES

Respectfully submitted,

NORMAN C. GORSUCH
ATTORNEY GENERAL

Peter C. Partnow
Assistant Attorney General
Counsel for Appellees

Filed August 7, 1974, in the
SUPREME COURT of the State of
Alaska.

CLERK

By: Veronica H. Knapick
Deputy Clerk

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I. NEITHER THE ALASKA CONSTITUTION, ARTICLE VII, SECTION 1, NOR PROVISIONS OF THE ALASKA STA- TUTES, OR THE ALASKA ADMINISTRATIVE CODE CREATE AN ABSOLUTE RIGHT TO ATTEND A SECON- DARY SCHOOL IN EACH TOWN OR VILLAGE IN ALASKA. -----	14
A. The Alaska Constitution, Article VII, Section 1, does not create an absolute right to attend a secondary school in ones immediate place of residence. -----	14
1. The Alaska Constitution requires the legislature to establish the system of public education in Alaska and does not require that this system include a local secon- dary school at every populated location in the state. -----	14
2. While the Alaska Constitution does create a right to receive public education, which right has been granted to appellants, can absolute right to attend a local secondary school in all populated areas of the state is not thus implied. -----	23
B. The legislature has established a "sys- tem" of public education in the state which allows for, but does not require the establishment of local secondary schools in isolated, sparsely populated areas of the state. -----	26
1. Statutory provisions relied on by appellants do not create an obliga-	

	tion to provide secondary schools in every village and town in the state. -----	26
2.	Additional provisions of the Alaska Statutes not discussed by appellants indicate that local secondary schools may be established only when economically and educationally sound. -----	31
3.	As part of the state's educational system, it is permissible to condition provision of local secondary schools on economic feasibility. ---	34
4.	Determination of the soundness of the educational program is properly a consideration to be made by the legislature and the state's educational agencies, rather than the courts, in considering establishment of secondary schools in sparsely populated locations. -----	38
5.	Correspondence study is a constitutionally permissible, statutorily recognized, and educationally sound component of Alaska's system of public schools. -----	39
C.	Nothing in the Alaska Administrative Code obligates respondents to establish local secondary schools in every village and town in the state. -----	42
1.	The provisions of the Alaska Administrative Code which appellants relied on below have been properly amended so as to clearly indicate that there exists no absolute duty to establish a secondary school in each populated location in the state. -----	42
2.	Even under the Alaska Administrative Code as it previously existed, there was created no absolute duty to establish a secondary school in every populated location in the state. ---	45

II. THE ESTABLISHMENT OF SECONDARY SCHOOLS IN SOME BUT NOT ALL LOCALITIES IN ALASKA SHOULD NOT BE FOUND BY THIS COURT TO CONSTITUTE A DENIAL OF EQUAL PROTECTION AS PROVIDED BY THE ALASKA CONSTITUTION, ARTICLE I, SECTION I. -----	53
A. Appellants affirmatively waived any equal protection claim before the Superior Court. They should not now be allowed to seek reversal due to that Court's adherence to their directive not to consider such a claim. ----	50
B. Even if this Court were to consider appellants' untimely equal protection claim, decision of the Superior Court should be affirmed since appellants have not been denied a fundamental right, nor have they been invidiously or arbitrarily discriminated against. ----	52
1. Attending a secondary school in one's town or village of residence is not a fundamental right under the Alaska Constitution. -----	52
2. Appellants do not constitute a suspect classification, nor have they been invidiously or arbitrarily denied a benefit provided to other school aged children in the state.--	50
3. That small local secondary schools have been or are being established in some but not all rural villages and towns does not constitute a denial of equal protection. -----	57
4. The non-applicability of the state's compulsory education law to school aged children who do not live in the vicinity of an established secondary school does not constitute an invidious discrimination. -----	58
CONCLUSION: -----	60

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