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M E M O R A N D U M

TO: John Van Winkle

DATE: July 14, 1970

FROM: Chris Cooke

RE: Alaska Schools

Sorry for the delay in responding to your memo of June 26, but as you can no doubt imagine, quite a lot has been going on recently.

I don't have a model complaint such as you requested; however, many types of challenges are possible and we have several sets of pleadings from cases around the country attacking analogous problems.

Let me give you some examples though of the types of challenges that are possible:

1. A native student has a right to be educated within the State of Alaska. Under federal law he cannot be sent to school outside the state in which he lives without the consent of his parent or guardian. Therefore, if a parent does not want his child to go to Chemawa or Chilocco he can withhold consent or revoke any previously given (I think the present form of the BIA consent form can be challenged too because it does not clearly indicate that the child will be sent out of state and in fact implies the opposite.).
2. A native student has the right to be educated in State schools. If a student does not wish to go to Mt. Edgecumbe or other BIA school within the state, he can assert his right to be educated in the school facilities of the state which are, under the Alaska Constitution, "open to all children of the State".
3. If a native student does not wish to live away from home to attend school, either state or BIA, then he can assert his rights under the laws of Alaska to be educated in

the district (i.e., meaning state-operated school district, at least) in which he is a resident. If his village contains more than five secondary level pupils in any grade, then he can assert his right to have the state-operated school district and its school board provide classes for every such grade (or any elementary grade with more than three pupils).

4. In a somewhat more tenuous area, so far as the status of the law is concerned, native students and parents can assert their right to equal educational opportunity, preservation of their culture and language in the schools, and equitable procedures of educational testing (e.g., not in English language, not using white middle-class standards and stereotypes).

Another interesting problem to contemplate, and an increasingly serious one as the boarding home program expands, is the disenfranchisement of parents of boarding home students from school board elections. If the students were educated in village, BIA or state-operated schools the parents would elect an advisory school board to perform at least theoretically some policy-making functions with respect to their schools. With the development of the boarding home program now a great number of native students are being placed in schools in Anchorage, Fairbanks, Kodiak, etc., where educational policies and priorities are set by the local school boards elected by the resident voters of those places. Arguably, those boards, as presently constituted, may be even less sensitive to the needs and desires of the native students than state-operated schools and the BIA. This situation should be corrected.

The enclosed sections from the Alaska Statutes and Constitution should help clarify some of my statements.

CRC:jw
Enclosure

Article VII

Health, Education, and Welfare

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.

Words "or indirect" not included in last sentence.- The minutes of the constitutional convention reveal that the Committee on Health, Education and Welfare Provisions, in drafting the last sentence of this section, considered the words "direct" and "indirect" and felt that the words "or indirect" after the word "direct" should not be used for the reason that "they would reach out to infinity practically" and shut out the children in private schools from such free care as was being given by the state welfare department to all children. *Matthews v. Quinton*, Sup. Ct. Op. No. 31 (File No. 48), 362 P. (2d) 932.

But no distinction is made between "general funds" and "funds for the support of free schools." The prescription in this section is against the appropriation of "any public money." *Matthews v. Quinton*, Sup. Ct. Op. No. 31 (File No. 48), 362 P. (2d) 932.

Transportation of school children to nonpublic schools at public expense would be in contravention of the state constitution. *Matthews v. Quinton*, Sup. Ct. Op. No. 31 (File No. 48), 362 P. (2d) 932.

The delegates to the constitutional convention and the people who by their vote ratified the constitution left it to the supreme court to decide whether free transportation of children to nonpublic schools would constitute a "direct" benefit to the schools. If they had intended otherwise, the framers of the constitution would have followed the example set by the people of New York and New Jersey and settled the controversial issue by providing in the constitution itself for transportation of school children to nonpublic schools at state expense. *Matthews v. Quinton*, Sup. Ct. Op. No. 31 (File No. 48), 362 P. (2d) 932.

Section 2. State University. The University of Alaska is hereby established as the state university and constituted a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. Its property shall be administered and disposed of according to law.

Section 3. Board of Regents of University. The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The board shall, in accordance with law, formulate policy and appoint the president of the university. He shall be the executive officer of the board.

Section 4. Public Health. The legislature shall provide for the promotion and protection of public health.

Section 5. Public Welfare. The legislature shall provide for public welfare.

(d) This section does not prevent a high school from issuing a diploma to a student who has completed the 12th grade. (§ 1 ch 98 SLA 1966)

Sec. 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. (§ 1 ch 98 SLA 1966)

Am. Jur. reference. --- 47 Am. Jur.,
Schools, §§ 146 to 159.

Sec. 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. This subsection shall not be construed to waive the compulsory attendance requirements of AS 14.30.010.

(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 or who will become five years of age before November 2 following the beginning of the school year, and who is under school age, may enter a public school kindergarten.

(e) A child under school age shall be admitted to 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. (§ 1 ch 98 SLA 1966)

Sec. 14.03.090. Sectarian or denominational doctrines prohibited. No partisan, sectarian, or denominational doctrines may be advocated in a public school during the hours the school is in session. No teacher or school board violating this section may receive public money. (§ 1 ch 98 SLA 1966)

Sec. 14.03.100. Use of school facilities. The governing body of a school district may allow the use of school facilities for any legal gatherings or assemblies. The governing body shall adopt bylaws that will insure reasonable and impartial use of the facilities. (§ 1 ch 98 SLA 1966)

Article 5. Advisory School Boards.

Section

300--395. [Repealed]

Secs. 14.10.300--14.10.390.

Repealed by § 59 ch 98 SLA 1966, effective July 1, 1966.

Editor's note. The repealed article ch. 25, SLA 1963; and §§ 1, 2, ch. 58, derived from §§ 1-4, ch. 98, SLA SLA 1964.
1960; § 1, ch. 140, SLA 1961; §§ 1-4,

Sec. 14.10.395. Voter qualifications.

Repealed by § 3 ch 58 SLA 1964.

Chapter 12. Organization and Government of
School System.

Article

1. Districts (§§ 14.12.010--14.12.020)

2. School Boards (§§ 14.12.030--14.12.100)

Article 1. Districts.

Section

10. Districts of state public school system

Section

20. Support, management, and control

Sec. 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. (§ 1 ch 98 SLA 1966)

Effective date of chapter.--Section 61, ch. 98, SLA 1966, provides: "This Act takes effect July 1, 1966."

Sec. 14.12.020. Support, management, and control. (a) Operation of the state-operated school district is under the management and control of the department.

(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 department 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. (§ 1 ch 98 SLA 1966)

cational program for each school age child who is a resident of the district;

(3) withhold the salary for the last month of service of a teacher or administrator until the teacher or administrator has submitted all summaries, statistics, and reports which the school board may require by bylaw;

(4) transmit, when required by the assembly or council but not more often than once a month, a summary report and statement of money expended;

(5) keep the minutes of meetings and a record of all proceedings of the school board in a pertinent form;

(6) keep the records and files of the school board open to inspection by the public at the principal administrative office of the district during reasonable business hours. (§ 1 ch 98 SLA 1966)

Sec. 14.14.100. Bylaws and administrative rules. (a) The school board policies relating to management and control of the district shall be expressed in written bylaws formally adopted at regular school board meetings.

(b) Administrative rules which do not embody school district policy need not be promulgated as bylaws; however, the rules shall be in written form and readily available to all school personnel. (§ 1 ch 98 SLA 1966)

Sec. 14.14.110. Cooperation with other districts. When necessary to provide more efficient or more economical educational services, a district may 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 district for any grade represented by more than three elementary pupils or five secondary pupils. (§ 1 ch 98 SLA 1966)

Sec. 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 chil-