

## IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

## THIRD JUDICIAL DISTRICT AT ANCHORAGE

WILLIE & SOPHIE KASAYULIE, as Parents )  
 and Guardians of minors MARK KASAYULIE )  
 and ROBYN KASAYULIE; PAUL & MARYANN )  
 MIKE, as Parents and Guardians of minors )  
 TRAVIS MIKE, CALVIN MIKE, and LEEANDY )  
 MIKE, ARTHUR & RUTH HECKMAN, as Parents )  
 and Guardians of minors ARTHUR HECKMAN, )  
 JR., LLOYD HECKMAN, CANDACE HECKMAN, and )  
 SUZANNE HECKMAN; BERING STRAIT SCHOOL )  
 DISTRICT; IDITAROD AREA SCHOOL DISTRICT; )  
 KASHUNAMIUT SCHOOL DISTRICT; LOWER )  
 KUSKOKWIM SCHOOL DISTRICT; LOWER YUKON )  
 SCHOOL DISTRICT; YUPIIT SCHOOL DISTRICT; )  
 and THE CITIZENS FOR THE EDUCATIONAL )  
 ADVANCEMENT OF ALASKA'S CHILDREN, )

Plaintiffs, )  
 )  
 )

v. )  
 )  
 )

STATE OF ALASKA, )  
 )  
 )

Defendant. )  
 )

FILED  
 in the Office of  
 Superior Court  
 Judge John Neese

SEP 21 1999

State of Alaska  
 Third Judicial District  
 at Anchorage

CASE NO. 3AN-97-3782 CIV

ORDER GRANTING PLAINTIFFS'  
MOTIONS FOR PARTIAL SUMMARY JUDGMENT  
ON FACILITIES FUNDING

Introduction

Kasayulie et al instituted this civil action against the State of Alaska to obtain a judgment declaring that the method of funding capital projects for education is void under the Alaska Constitution, it violates Title VI of the Civil Rights Act of 1964 and it is a breach of the State's trust obligations.

The motions addressed in this order are plaintiffs' Motion for Partial Summary Judgment on Facilities Funding; defendant's Motion for Partial Summary Judgment as to Plaintiffs' First Cause

of Action (Education Clause); and defendant's Cross Motion for Partial Summary Judgment as to Plaintiffs' Second Cause of Action (Equal Protection) and Third Cause of Action (Title VI).

The court holds that none of the motions filed contain genuine issues of material fact. For the reasons set forth below, plaintiffs' Motions for Partial Summary Judgment on Facilities Funding is GRANTED. Defendant's Motion for Partial Summary Judgment as to Plaintiffs' First Cause of Action (Education Clause) is DENIED. Defendant's Cross Motion for Partial Summary Judgment as to Plaintiffs' Second Cause of Action (Equal Protection) and Third Cause of Action (Title VI) is DENIED.

#### Background

The state has developed a system for funding school capital construction and major maintenance. The two statutory systems in place are the capital improvement program ("CIP") and the debt and bond reimbursement system.

CIP involves the submission of a grant application to the state. All applications are ranked by the Department of Education, and funding is to be granted in order of priority. CIP receives its money by legislative appropriations, but it has never been funded.

The debt and bond reimbursement mechanism provides that 70% of each bond issued will be reimbursed by the state. The remainder is paid for locally. This program is only available to municipalities or boroughs. Because rural educational attendance areas ("REAA") are unincorporated, REAAs can not participate. In

addition, a number of rural municipal school districts do not have sufficient property values to participate in the bond reimbursement program.

A few other funding mechanisms exist. From time to time the legislature appropriates additional school maintenance funding, but it is usually directed to urban areas. Cigarette sales tax money also goes towards funding schools, but only to municipality or borough districts.

Because of the funding system, rural schools are not getting the money they need to maintain their schools. Deficiencies include roofs falling in, no drinkable water, sewage backing up, and enrollment up to 187% of capacity. Some rural schools have been at the top of the priority list for a number of years, yet have received no funding.

#### Discussion

##### I. Standard of Review.

The proponent of a motion for summary judgment has the burden of establishing the absence of genuine issues of material fact and its right to judgment as a matter of law. Dansereau v. Ulmer, 903 P.2d 555, 570 (Alaska 1995) (citing Bauman v. State, Div. of Family and Youth Services, 768 P.2d 1097, 1099 (Alaska 1989)). The party opposing a motion for summary judgment need not establish that it will prevail at trial but merely that there exists a genuine issue of fact to be litigated. Alaska Rent-a-Car, Inc. v. Ford Motor Co., 526 P.2d 1136 (Alaska 1974). All inferences of fact from proffered proofs must be drawn in favor of the nonmoving party.

Maddox v. River & Sea Marine, Inc., 925 P.2d 1033, 1035 (Alaska 1996).

II. The State has violated the Education Clause.

Plaintiff Kasayulie has moved for summary judgment arguing that the Education Clause requires the state to provide adequate educational facilities. The plaintiffs further contend that the State is violating that duty by utilizing a funding scheme that does not adequately maintain schools in rural areas.

The state opposes arguing the Education Clause does not require it to provide buildings for schools. The clause only requires that the state establish and maintain a school system, which it has done. The State also argues that the legislature's discretion to appropriate funds prevents the court from instructing the legislature how to spend its money.

The Education Clause states:

The legislature shall by general law establish and maintain a system of public schools open to all children of the state.

AK. Const. art. VII sec. I (1998).

The court has the power to interpret Alaska Constitutional mandates, including those placed on the legislature. Malone v. Meekins, 650 P.2d 351,356 Alaska (1982).

A. The Education Clause requires the State to provide and maintain school facilities.

The Education Clause places an affirmative duty on the state to provide public education. Facilities funding is an integral part of education and as such is inseparable from the State's obligation to establish and maintain a public education system.

The State of Alaska itself has recognized the importance of adequate school facilities. The Department of Education standards state that "The school plant, consisting of site, buildings, equipment, and services, is an important factor in the functioning of the educational program. The school plant serves as a vehicle in the implementation of the school mission."

Comparing the Education Clause in the Alaska Constitution with those in other states is instructive. Hootch v. AK State-Operated School System, 536 P.2d 793, 801 (Alaska 1975). The state of New York's Education Clause is similar to Alaska's.

The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.  
N.Y. Const. art. XI, sec. 1. (1987).

The New York Court of Appeals interpreted its Education Clause to require the state to provide, at a minimum, "adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn." Campaign for Fiscal Equity, Inc. v. State, 655 N.E.2d 661, 666 (N.Y. Ct.App. 1995). Alaska, like New York, must provide adequate educational facilities.

B. The State must use a funding scheme that adequately maintains rural schools.

Hand in hand with the duty to provide educational facilities, is the duty to fund the facilities. All schools must have substantially equal access to capital funds. The state does not provide the rural schools with assurance of adequate facilities funding.

The state system for facilities funding provides adequate

opportunities for urban school districts, but not for rural schools. The CIP grant system has never been funded. As result, priority ranked schools, which are mostly rural, are not funded. The bond reimbursement program is available only for boroughs and municipalities. REAAs have no access to those funds. Even if a rural area is incorporated, its property values are often too low to support bonding. A portion of the cigarette tax goes towards funding education, but only for borough and municipality schools. Furthermore, sporadic legislative appropriations for facilities are usually directed towards urban schools.

The rural areas do not have substantially equal access to facilities funding. As a result, many rural schools are continuously denied facility funding. A large number of these schools need replacement or total renovation. Failing to provide adequate funding for facilities in rural areas violates the Education Clause.

Therefore, plaintiff Kasayulie's Motion for Partial Summary Judgment on the First Cause of Action (Education Clause) is GRANTED, and defendant State's Motion for Partial Summary Judgment as to the same is DENIED.

III. The State has violated the Equal Protection Clause.

Kasayulie argues that the inequality of funding for educational facilities deprives the school districts of their right to equal protection. The state opposes arguing it is reasonable for the legislature to provide the bond reimbursement program only to municipalities and boroughs because it creates an incentive for

REAA's to incorporate. Furthermore, the legislature does not have to solve all the problems at once, it can solve them one at a time.

Treating one group of similarly situated people different from another is unconstitutional under the Equal Protection Clause. The level of scrutiny applied to an equal protection analysis depends on the individual interest asserted. Laborers Local No. 942 v. Lampkin, 956 P.2d 422, 430 (Alaska 1998). The interest stated is the most important factor in determining the level of review. The more important the interest, the higher the scrutiny. Alaska Pacific Assur. Co. v. Brown, 687 P.2d 264, 269 (Alaska 1984).

A. Education is a fundamental right.

The interest asserted by Kasayulie is the right to a public school system open to all children of the state. Kasayulie states that the right to education is a fundamental right because it is expressly stated in the Alaska Constitution. The state opposes by arguing that Kasayulie has no historic or legal basis supporting its contention.

Alaska values education. The Alaska Constitution guarantees all children of Alaska a right to a public education. AK Const. article VII, sec. 1 ("the legislature shall by general law establish and maintain a system of public schools open to all children of the State..."); Breese v. Smith, 501 P.2d 159, 167 (Alaska 1972). Hundreds of millions of dollars are spent every year on education, standards are set and each child is required to attend school. Chief Justice Warren articulated the importance of education in Brown v. Board of Education.



...education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education demonstrates our recognition of the importance of education to our democratic society... It is the very foundation of good citizenship... it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

347 U.S. 483, 493 (1954).

To determine if the right to an education is a fundamental right the court must look to the Constitution. The federal Constitution does not explicitly or implicitly provide for a right to education. As a result, the United States Supreme Court held that education is not a fundamental right under the federal equal protection analysis.

The key to discovering whether education is "fundamental" is... whether there is a right to education explicitly or implicitly guaranteed by the Constitution.

San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 33 (1973).

Unlike the United States Constitution, the right to education is expressly stated in the Alaska Constitution. The Education Clause guarantees all children a right to public education. Breese v. Smith, 501 P.2d 159, 167 (Alaska 1972). Because the interest is expressly provided for in the Constitution, it is a fundamental right under the equal protection analysis.

B. The State does not have a compelling reason for the inequality of funding.

Because the right to education is a fundamental right, the state must have a compelling reason for the inequality of facility funding.



...the state must establish its interference with that right is forced by some compelling state interest and its interference is the least onerous means of accomplishing that objective.

Campbell County School District v. Wyoming, 907 P.2d 1238, 1666-67 (Wyoming 1995).

The state says the facilities funding system is in furtherance of its duty to establish and maintain a public school system. The compelling reason for the means chosen is to provide an incentive for REAAs to incorporate and to encourage maximum local participation and responsibility.

The State has cited no compelling reason for infringing on the fundamental right to an education. Encouraging a REAA to incorporate is not a compelling reason for denying schools the right to school buildings. The same can be said for the State's plan to encourage local participation. It is unlikely that a compelling reason exists for the arbitrary manner in which the State distributes facilities funding. Furthermore, there are less restrictive means available to achieve incorporation of unorganized areas of the state.

Another argument from the State is that the legislature is not funding rural schools because it is solving one problem at a time. After the state deals with funding for urban areas, it will begin addressing rural funding issues. There is absolutely no evidence for this proposition.

The State also tries to argue that it is granting the urban schools a benefit. In doing so it is not denying the rural schools a benefit by granting it to another. This argument fails. Education is not a benefit, it is a constitutional right.

Therefore, Kasayulie's Motion for Partial Summary Judgment as to the Second Cause of Action (Equal Protection) is GRANTED, and defendant State's Cross Motion for Partial Summary Judgment as to the same is DENIED.

IV. The State has violated Title VI.

Kasayulie argues that the funding system violates Title VI implementing regulations as it has a disparate impact on racial minority school children. The State opposes, arguing the Alaska Natives are affected by their residence, not their race.

Title VI prohibits discrimination because of race or national origin in federally funded programs. 42 U.S.C. section 2000d et seq. The State must comply with Title VI as Alaska receives money for education from the federal government. Title VI implementing regulations state that recipients of federal funding may not:

utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

34 C.F.R. Sec. 100.3(b)(2)

A New York appellate court stated:

A validly stated cause of action under the Title VI regulations thus has two components: "whether a challenged practice has a sufficiently adverse racial impact--in other words, whether it falls significantly more harshly on a minority racial group than on the majority--and, if so, whether the practice is nevertheless adequately justified." [citations omitted] Statistics comparing benefit distribution or access patterns among members of the protected class and the over-all population play a key role in demonstrating an adverse racial impact. [citations omitted]

Campaign for Fiscal Equity, Inc. v. State, 655 N.E.2d 661, 670 (N.Y. Ct. App. 1995).

Kasayulie need not prove discriminatory intent, but only that the funding scheme has the effect of discrimination. Guardians Assn. v. Civil Serv. Comm., 463 U.S. 582 (1983). The State must then show that such actions are justified.

The facilities funding scheme has a disparate impact on racial minorities. Alaska Natives make up the vast majority of rural school enrollment, up to 99% in some REAAs. At the same time schools receiving the most funding, Anchorage and Fairbanks, have only a 10% Alaska Native population. All total, Native enrollment is 15.4% and 37.3% in organized boroughs and city school districts respectively. REAAs' populations are 82% Native. The State's denial of funding to the rural schools has a racially discriminatory effect, as those are the same schools that enroll an overwhelming majority of Native students.

The State's actions are not adequately justified. The State argues that the Title VI claim is about residence, not race. That is incorrect. Title VI is about the different treatment afforded certain populations of people in Alaska. It is about the fact that school districts with predominantly Native enrollment receive lower funding than others. The State has shown no substantial legitimate justification for such disparate treatment.

Therefore, Kasayulie's Motion for Partial Summary Judgment as to the Third Cause of Action (Title VI) is GRANTED, and State's Cross Motion for Partial Summary Judgment as to the same is DENIED.

Conclusion

For the aforementioned reasons, IT IS HEREBY ORDERED that plaintiff Kasayulie's Motion for Partial Summary Judgment on Facilities Funding is GRANTED. Defendant's Motion for Partial Summary Judgment as to Plaintiffs' First Cause of Action (Education Clause) is DENIED. Defendant's Cross Motion for Partial Summary Judgment as to Plaintiffs' Second Cause of Action (Equal Protection) and Third Cause of Action (Title VI) is DENIED.

DATED this 1<sup>st</sup> day of September, 1999 at Anchorage, Alaska.



John Reese,  
Superior Court Judge

I certify that on: 9-1-99  
a copy of the above was mailed/delivered  
to each of the following at their addresses  
of record: D. Hickey

H. Trickey  
Secretary/Deputy Clerk *ms*