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Senator Shelley Hughes, Chair
Senate Education Committee
State Capitol Room 125
Juneau AK, 99801
Senator.Shelley.Hughes@akleg.gov

Dear Senator Hughes,

Re: SB 96, Version T, Sections 10 and 11/*Molly Hootch* Decision

Under SB 96, Version T, sections 10 and 11, the school-size multiplier (above 1.0) in the ADM calculation under AS 14.17.450(a) would not be applied to the student count for a school if the school is below 80 percent capacity and is within 25 miles by road of another school in the same district that is also below 80 percent capacity. A district could decide that, in light of the reduced funding, it would be financially expedient or necessary to close a school not eligible for the school-size multiplier. The Senate Education Committee has asked whether this provision would run afoul of the requirements of law established in Alaska court cases.

By way of background, the Education Clause of the Alaska Constitution provides that "the legislature shall by general law establish and maintain a system of public schools open to all children of the State." Article VII, section 1, Alaska Constitution. To assess whether a local school is mandatory under the Education Clause, the most relevant case is *Molly Hootch v. Alaska State-Operated School System*, 536 P.2d 793 (Alaska 1975).

In that case, 27 students of secondary school age who resided in small rural communities sought to compel the state to provide secondary schools in their communities of residence. Although the Court found that the Education Clause confers upon Alaska school age children a right to education,[1] the Court held that the constitutional right to education does *not* include the right to attend a secondary school in one's community of residence.[2]

The Court found that the Education Clause does not require a uniform system, as it "appears to contemplate different types of educational opportunities including boarding,

[1] *Molly Hootch* at 799.

[2] *Id.* at 805.

correspondence, and other programs without requiring that all options be available to all students."[3] The Court concluded that "different approaches are appropriate to meet the educational needs in the diverse areas of the state.[4] The Court acknowledged that "differences in the manner of providing education sanctions (sic) some disadvantages. So long as they are not violative of equal protection, the nature and proper means of overcoming the disadvantages present questions for the legislature."[5] The Court went on to state, "The decision as to when it is feasible to establish local secondary schools is peculiarly legislative and executive in nature."[6]

As a potential further limitation on the *Molly Hootch* decision, the plaintiffs there sought to describe the plaintiff class as persons "living in communities where there are no public secondary schools or which lack daily transportation to such schools."[7] With the ADM revision proposed in SB 96, a school closure would apparently still leave students with a school within daily-transportation distance.

The Alaska Supreme Court in *Molly Hootch* declined to decide whether the lack of secondary schools in rural communities was racially discriminatory under the equal protection clauses of the Alaska or U.S. Constitutions and remanded the case to the trial court for an initial determination of this issue. Thereafter the parties entered into a settlement agreement whereby the state agreed to provide secondary schools in a long list of rural communities.

Because the *Molly Hootch* case involved a request for local secondary schools, the holding could be limited to those facts; i.e., a later court could possibly come to a different conclusion as to the constitutional requirement for local elementary schools. However, the court's analysis, based on the diversity of the state, the availability of various educational options, and the importance of the legislative and executive functions, applies equally to secondary and elementary schools.

The *Molly Hootch* decision leaves open the possibility that failing to provide local schools could be unconstitutional as a racially discriminatory practice. The proposed revisions to the school-size multiplier in SB 96 appear more likely to have a disproportionate impact on urban schools, since the reduced funding only occurs where two under-capacity schools are connected by a road. This makes it unlikely that the

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[3] *Id.* at 803.

[4] *Id.*

[5] *Id.* at 804-805.

[6] *Id.* at 804.

[7] *Id.* at 796, n.2.

proposed change would lead to a claim of racial discrimination under the equal protection clauses of the state and U.S. constitutions.

As written, the changes to the school-size ADM multiplier in SB 96 do not appear to violate constitutional rights under Alaska case law.

Sincerely,

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ATTORNEY GENERAL

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cc: Darwin Peterson, Director, Legislative Office