

Tobeluk v. Lind, the settlement of the Molly Hootch lawsuit:
IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

ANNA TOBELUK, et al.,

Plaintiffs,

vs.

MARSHALL LIND, et al.,

Defendants.

No. 72-2450

AGREEMENT OF SETTLEMENT

WHEREAS, a civil action has been brought by Alaska Native (Eskimo, Indian and Aleut) children of secondary school age to secure the provision of secondary schools in their communities of residence,, in which plaintiffs allege (a) a pattern and practice of racial discrimination against Alaska Natives in the non-provision of local secondary schools, in violation of the constitution and laws of the United States and Alaska (U.S. Const. Amend. XIV; 42 U.S.C. §§1981, 3.983, 2000d; Alaska Const. Art. I §1); and (b) a disparity between the manner in which secondary education is provided, to the Plaintiffs and the manner in which such education is offered to most other Alaska school children, which unduly burdens the exercise of plaintiffs' right to a public education, which is not justified by either a rational basis or a compelling state interest, and which is therefore violative of Article I §1 of the Alaska Constitution; and

WHEREAS, defendants allege that while they desire to provide secondary education facilities as set forth herein, and intend to do so within the limits of public funds, they have no constitutional obligation to provide the secondary facilities set out in this agreement; and

EXHIBIT A

WHEREAS, the parties in order to avoid lengthy litigation, wish to resolve this matter by means of settlement;

NOW THEREFORE, the parties, through their attorneys, subject to the approval and order of this Court, hereby agree as follows:

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STATEMENT OF AGREED FACTS

Jurisdiction

1. Jurisdiction is vested in this court by AS 22.10.020.

Plaintiffs

2. The named plaintiffs are Alaska Native children of secondary school age. They have completed the 8th grade, and are between the ages of 14 and 20. The named plaintiffs reside in six villages in various parts of the state. Each of these villages has an elementary school. In the villages of Akiachak, Kwigillingok, Mekoryuk, and

Nunapitchuk, the elementary school is operated by the United States Department of the Interior's Bureau of Indian Affairs. In the villages of Allakaket and Kongiganak, a public elementary school is operated. There are no public secondary schools (comprising grades 9-12) in these communities. In order to attend secondary school, the plaintiffs must leave their homes and families for nine months each year in order to participate in boarding programs. 1/.Some of the named plaintiffs have attended school in Anchorage, Bethel, Fairbanks, Kodiak, Sitka, Unalakleet, Wrangell, or Chemawa (Oregon); some have dropped out of these programs thus terminating their classroom education; others have not continued their schooling beyond the 8th grade level available in their community of residence. (1/ "Boarding programs" as used herein means boarding home programs and dormitory programs.)

Defendants

3. Defendants Katherine T. Hurley, August Anderson, Beverly Horn, Thelma Langdon, Darwin Heine, Malcolm Roberts, Ian Hohman., as members of the State Board of Education of-the State of Alaska, are responsible, pursuant to AS 14.07.020(1) and AS 14.07.075, for formulating statewide educational policy, administering funds to provide certain educational services, and directing the operations of the State Department of Education, which has general supervision over the public schools of the state.

4. Defendant Marshall L. Lind is the Commissioner of Education and, as such, is the principal executive officer of the Department of Education.

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Class

5. This action is properly maintained as a class action. The named plaintiffs represent a class whose members are Alaska Native children of secondary school age who reside in communities in the unorganized borough wherein (1) a public elementary school is operated, or an elementary school is operated by the Bureau of Indian Affairs; (2) a secondary school comprising grades 9-12 is not so operated, nor is daily transportation to such a secondary school available; and (3) a majority of resident children eligible to attend secondary school are Native.

6. The class consists of approximately 2663 Alaska Native children living in the 126 communities set forth in schedule B, attached hereto. Because there are no accurate data on the number of children out of school, the exact size of the class is uncertain.

7. The class is so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class, the claims of the plaintiffs are typical of the claims of the class, and the plaintiffs have fairly and inadequately protected the-interests of the class. Separate actions by individual members of the class would create a risk of inconsistent adjudications with respect to the individual members of the class and would thereby establish incompatible standards of conduct for the defendants. The defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the class as a whole.

8. Notice to members of the plaintiff class shall be given as follows:

(a) by the Department of Education, by mailing to the local school committee in each community set forth in Schedule B, attached hereto, a Notice of Settlement in a form approved by the Court; and

(b) by delivery of a joint press release of the parties to the television and radio stations, newspapers, and wire services in the state.

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General Facts

9. Prior to the turn of the century, a dual school :-system emerged unofficially in Alaska as resentment grew among the relatively few whites over emphasis on education for Natives and a belief that integrated schools would give only inferior education. In towns such as Juneau, Douglas and Sitka, where there were proportionately greater white populations, segregated schools were established. Segregated schools were also

established at Bethel, Nome, Egegik, Chitina, Ft. Yukon, and, is of 1929-30, at least a dozen other locations. In at least 12 of these communities there was a secondary school for non-Natives only. With the increase in population caused by the .Gold Rush in the late 1890's, agitation grew for the establishment of a separate system of schools for-the non-Native population. In 1900, Congress provided for the establishment and local. control of independent schools for whites within incorporated towns. By 1903, 9 incorporated town schools for white children had been established; as of 1917-18, there were 15 such schools, six of which graduated between 1 and 13 students each from secondary school.

10. Two statutes enacted by Congress in the early 1900's gave official sanction to this dual system. Under a 1917 amendment to the Alaska Organic Act, the Territorial Legislature was empowered "to establish and maintain schools for white and colored children and children of mixed blood who lead a civilized life in said territory . . ." Act of March 3, 1917, ch. 167, 39 Stat. 321. In the second statute, the Nelson Act originally passed in 1905, the federal government assumed responsibility for the education of Alaska Natives in the following terms:

- ◦ ▪ ▪ The education of the Eskimos and Indians in Alaska shall remain under the direction and control of the Secretary of the Interior, and schools for and among the Eskimos and Indians of Alaska shall be provided for by an annual appropriation, and the Eskimo and Indian children of Alaska shall have the same right to be admitted to any Indian boarding school as the Indian children in the States or Territories of the United States. Act of Jan. 27, 1905, Title IX, ch. 1, §309, 33 Stat. 619.

The Nelson Act clarified previous legislation and extended it to rural areas, relieving the U.S. Bureau of Education of responsibility for the education of white and mixed blood children, while the education of these children was provided by the Territory and local municipal authorities. The Bureau continued maintenance of a few white schools until local authorities gradually became able to assume full responsibility. The number of so-called Nelson schools—for children of white or mixed blood leading "a civilized life" in communities outside of incorporated towns—grew from 10 in 1907 to 46 in 1918.

11. The pre-statehood pattern of sending native children away from their home villages to secondary boarding schools, which is reflected in the current system of secondary education, was generated by the dual school system. This pattern developed from the federal government's policy of sending Native children away from their home villages to secondary boarding schools, while territorial officials undertook to provide local secondary schools for white and mixed-blood children for whose education the Territory was responsible. The key to the federal government's program of acculturating Alaska Natives lay in the special education of the most intellectually advanced youth. In spite of many criticisms, the U.S. Bureau of Education continued this policy of sending the brightest children to boarding schools for a basically vocational education, and then returning them to their villages. Most were sent to Indian schools in the United States.. However, the deleterious effects of sending children to school so far away, including health hazards and sociological maladjustments, soon became evident, and in 1925 the federal government initiated a program of establishing vocational boarding schools within Alaska. Schools were opened in Eklutna, near Anchorage; at Kanakanak, on Bristol Bay; and at White Mountain, on the Seward Peninsula. These schools were eventually superceded by Mt. Edgecumbe, a BIA boarding school for Natives established at the former naval air station of Sitka in 1947. Rural Native students were presented with the choice of either staying at home and forgoing attendance at a secondary school or leaving home and attending Mt. Edgecumbe. When enrollment at Mt. Edgecumbe eventually exceeded the school's capacity, the BIA began admitting Native Alaskans to Indian boarding schools in other states. Hundreds of Alaska Natives entered boarding schools in Chemawa, Oregon, and Chilocco, Oklahoma.

12. While secondary school opportunities for Natives were generally limited to enrollment in the boarding schools, secondary schools for whites were started in an increasing number of communities, including those with small secondary enrollments. By 1950-51, there were 34 public secondary schools in the state. Only 5 had enrollments exceeding 100; 24 had enrollments under 50, and 12 had enrollments of 10 or fewer. As of 1958-59, there were 34 public secondary schools in the state. Only six of these schools were in communities with a school population at least 50 per cent Native.

13. The cumulative effect of instituting boarding programs for Natives, while local secondary schools were generally provided where non-Natives resided, is indicated by the relative proportions of Native and non-Native secondary school age children who presently reside in communities which have elementary schools but not secondary schools. The proportion of such "unhoused" Native children to the total Native secondary school population in the state (including public and BIA schools) is 42 per cent. The proportion of "unhoused" non-Native children to the total non-Native secondary school population in the State (including public and BIA schools) is .4 per cent.

14. At the time statehood was attained, a vestige of the dual system existed in Alaska, in that the BIA operated schools for Alaska Natives while Alaska's territorial legislature and Department of Education provided schools primarily attended by non-Natives. This vestige has hindered the State's provision of secondary schools in villages wherein the BIA operates elementary schools. The state followed a policy through the early 1970's of leaving to the discretion of the BIA, in the villages wherein the BIA operates elementary schools, the extent and nature of primary and secondary education, including whether a local secondary school should be operated in such villages. The state's policy included not constructing secondary schools in villages which had BIA elementary schools.

15. After 1966, the state adopted a policy of constructing regional secondary schools and dormitories and developing boarding home programs. While affording a greater number of Natives residing in the unorganized borough a secondary education within the state, these efforts did not completely eradicate the pattern--generated by the former dual school system established prior to statehood--of requiring a large proportion of Native children to board away from home if they wished to attend a secondary school. Boarding Home Programs have existed in Anchorage, Bethel, Fairbanks, Kodiak, Nome and a number of villages. A total of 32 boarding home programs are now operating, with a total enrollment of 851 students. Dormitories have been operated in Bethel, Nome, and Kodiak. The only dormitory now operating is in Bethel, with 175 students.

16. Since 1967 the State has reduced the number of Native students leaving the state for a secondary education from 850 to 39 in 1975. These 39 students continued to attend secondary schools outside the state by choice, in order to complete programs of study.

17. In the late 1960's officials in the Department of Education concluded that the regional secondary school program was failing to provide all the benefits originally envisaged, and had detrimental effects upon some of the students which outweighed the benefits they were deriving from the program. Furthermore, technological advances enhanced the quality of secondary education which could be provided in rural locations. In 1970, the Department discontinued the construction of dormitories and large regional secondary schools and began a program of providing local secondary schools. Since 1970, this program has resulted in the unorganized borough in the completion of 11 local secondary schools with 7 more presently under construction, and funds appropriated for an additional 6. As a result of steps taken prior to the negotiation of this agreement, 29 of the 140 predominantly Native communities in the unorganized borough which presently have an elementary school will, by 1977, have a local secondary school, grades 9 to 12, or daily access to such a school. There are 26 predominantly non-Native communities in the unorganized borough which presently have an elementary school. Sixteen of these communities have had local secondary schools or daily access to such schools within the last three years or will have such schools or daily access by 1977.^{2/} There are a total of 170 communities in the unorganized borough which have elementary schools. (^{2/} Of the 10 predominately non-Native communities without local secondary schools, 9 are located in the southeastern portion of the state. These 9 communities are "logging camps," which are constructed temporarily on U.S. Forest Service land leased for a period of approximately twenty years for the purpose of conducting logging operations. Seven of the 10 villages have projected secondary enrollments of 7 or fewer students; 3 of the villages have projected secondary enrollments of 13-18 students.)

18. The absence of local secondary schools in each of the villages set forth in each of the 126 villages set forth in Schedule B, attached hereto, is attributable at least in part to the pattern of secondary education produced by the dual school system established prior to statehood.

19. Approximately 2783 secondary school age children reside in communities in the unorganized borough which have a public elementary school or an elementary school operated by the Bureau of Indian Affairs, but which do not have a secondary school through the 12th grade nor daily access to such a school. The State Department of Education refers to such children for statistical purposes as "unhoused." Over 95 percent (2663) of these unhoused children are Native; less than 5 percent (120) are non-Native. This compares with a 1974-75 secondary student population enrolled in the unorganized borough school district of 1301 Native and 617 non-Native children, ^{3/} and a secondary student population enrolled state-wide in public and BIA schools of 6288 Native and 28,105 non-Native children. (^{3/} These figures do not include 11 Native and 1,056 non-Native children enrolled in on-base secondary schools. Prior to the establishment of AUBSD, these on-base schools have been operated by the Alaska State-Operated School System. All Children attending on-base elementary schools were provided secondary schools or daily access to such schools.)

20. Members of the plaintiff class enrolled in the boarding program have experienced accelerated drop-out rates, psychological and social problems, including disruption of family life and loss of sense of identity, and failure to live up to educational potential. Studies of drop-out rates indicate far higher rates among Native children attending boarding programs than among Native children residing at home while attending secondary school. This drop-out problem is in part attributable to severe homesickness often experienced by students in the boarding program. Some children who have finished the eighth grade in their villages have never gone away to attend secondary-school. Others, while enrolled in a boarding program, have transferred on numerous occasions from program to program, without attaining discernible educational benefits from any program.

21. Dormitory and boarding home programs have high costs in relation to the educational benefits provided. Typically, school absenteeism has been high. Furthermore, many village students are unable to benefit from the wide range of courses available at urban schools because they do not have the academic background to take advantage of them. Frequently, they end up in courses for slow learners. Yet these are the most expensive secondary school programs. In FY 1974, the rural boarding program cost an average of \$11,200 per student per year for education and boarding, while dormitory programs cost \$5,600 per student per year. The per student cost of local secondary school programs in the unorganized borough in FY 1974 was approximately \$2,000. In FY 1975, the per student instructional cost for rural secondary school programs was approximately \$2,300. For rural boarding home programs, the cost was approximately \$4,600 per student. The cost of dormitory programs remained substantially higher. Actual costs per student in dormitory programs may end up higher because of the high drop-out rate, while the dormitory's fixed costs remain the same.

22. Harmful effects have resulted from the boarding programs. Village students placed in both dormitory and boarding home programs often do not receive the guidance necessary to enable them to cope with town life or with emotional problems which they experience. Also, the sending of Native children to secondary schools outside of their villages has had harmful effects on village cultural and family life and on the student's relationship to each. When the student who attends a boarding program returns to his village in the summer, he finds it difficult to readjust to village life because of the increasing differences between himself and the other members of his village. He is unable to fully identify with either the town or village way of life. Such students are in the process of becoming what anthropologists term "marginal" people: usually, they are not assimilated into the town culture with which they must contend in order to attend secondary school, while at the same time they have become estranged from the village way of life. For many of these students, secondary school graduation represents the point of no return. If they have come this far, it is unlikely that they will ever return to the village permanently.

23. Although village children who choose not to board away from home to attend secondary school are eligible to enroll in correspondence study, this program has in the past been unsatisfactory for most such children. ^{4/} This is so in large part because, for most students, parental interest and supervision are essential if the student is to complete correspondence courses successfully, and most village parents have not had sufficient formal education to supervise such courses effectively. Though the Department has greatly upgraded the elementary and secondary correspondence program in recent years by increasing the budget therefor from \$81,405 in 1970 to \$848,373 for the unorganized borough for 1975-76; secondary correspondence courses, which have been obtained from programs in Nebraska and Illinois, have not been sufficiently adapted to the educational needs and

the culture of village children. Furthermore, the problem of parental inability to supervise a secondary school course of study continues to limit the effectiveness of the correspondence program for many students. (4/ Historically, the number of children in the plaintiff class the have been served by secondary correspondence is small, as indicated by the overall figures for correspondence participation. For example, as of June, 1973, there were 60 active secondary students enrolled in correspondence studies statewide out of a total of between 600-700 elementary and secondary students. Between 1959 and 1972, 41 students received diplomas via correspondence study. Between 1960 and 1963, 7 students received high school diplomas after completed 2 years or more study via secondary correspondence. The number of these students, if any, who meet the criteria of membership in the plaintiff class is not known.)

24. Small secondary schools have long been an accepted and, unlike the boarding programs, a successful feature of the State's educational program, and it has been the Department's policy since 1970 to construct such schools in Native villages in the unorganized borough.

25. A 9th grade program was provided beginning in 1971-72 to accommodate 8 students in Anderson Village, and successive grades were added yearly through 1974-75, when 52 students were enrolled in grades 9-12, notwithstanding that such students had daily access to a larger secondary school in Nenana; a secondary school facility, including a gymnasium, chemistry laboratory, workshop, home economics room and academic classrooms, has been constructed in Thorne Bay (1974-75 enrollment, grades 9-12; 23); secondary school instruction, under the supervision of a certificated teacher, was begun in Whittier in 1974-75 (enrollment, grades 9-11: 8); secondary school instruction under the supervision of the certificated elementary school teacher employed in the community, utilizing correspondence materials, was provided in Gustavus in 1972-73 for 5 students and in 1972-73 for 2 students, in Cape Pole in 1972-73 for 5 students, in Port Alice in 1973-74 for 5 students, and in Paxson in 1972-73 for 1 student, in 1973-74 for 2 students, and in 1974-75 for 1 student. The communities of Anderson Village, Thorne Bay, Whittier, Gustavus, Cape Pole, Port Alice, and Paxson are predominantly non-Native. Of the 126 communities on Schedule B, attached hereto, 5 have larger projected secondary enrollments than the 1974-75 enrollment of Anderson Village; 48 have projected secondary enrollments equal to or larger than the 1974-75 enrollment of Thorne Bay; 111 have projected secondary enrollments equal to or larger than the enrollment of Gustavus in 1971-72, Cape Pole in 1972-73, or Port Alice in 1973-74; and all have larger projected secondary enrollments than the enrollment of Gustavus in 1972-73 or Paxson in 1972-75.

26. Prior to the initiation of this action, local secondary schools were not provided in other large Native communities. The largest such community was Barrow, which did not have a secondary school through the 12th grade until 1974-75, when enrollment, grades 9-12, was 161.

27. Though the cost of constructing rural schools has quadrupled since 1966, the per-pupil operating costs of boarding programs is and historically has been far higher than the per-pupil costs of rural schools, since the State must assume the financial burden of housing, feeding and supervising children who do not reside at home. When construction costs for new secondary school facilities are included in the per-pupil costs of providing local secondary schools., the long-range costs remain comparable to, and in many instances lower than, the costs of providing boarding programs.

28. In addition to the fiscal costs of operating boarding programs, there may be heavy social costs, in addition to those set forth in Paragraphs 20 and 22, above. Because of these social costs, the State may well bear increased costs for social services—including welfare, rehabilitative programs, and law enforcement—which will be lessened to the extent that children living at home with their families in their own villages are not subjected to the problems which. have arisen in the boarding programs.

29. The parties agree that the relief herein provided, whereby each community set forth on Schedule B, attached hereto, will be afforded the opportunity to have its own secondary program, is an educationally sound approach for a number of reasons. It is the present policy of the State Board of Education and the Commissioner to provide local secondary schools because, based upon the best information currently available, such schools offer the greatest educational benefits for most students in the unorganized borough at the lowest over-all costs. The assumed educational. benefits of larger secondary schools have not materialized for most village students. The

majority of such students have not enrolled in specialized curricula but in basic courses which can be taught in village schools. Village secondary schools offer a basic skills curriculum, which can be enriched by a variety of supplementary programs, in a personal atmosphere and in small-group situations. Local traditions, customs, and skills can be transmitted from the adult generation without the severe social dislocation inherent in removing adolescents from familiar surroundings.

30. The parties further agree that it is an educationally sound approach, based upon the best information currently available, to offer to each community set forth on Schedule B, attached hereto, the opportunity to choose not to have a secondary school program, to have a partial program, or to have a four-year program, in accordance with the regulatory provisions set forth in Schedule A, attached hereto.

CONSENT DECREE

1. The provisions of the regulations set forth in Schedule A, attached hereto, are hereby incorporated herein as provisions of this Consent Decree. No change in the regulations which affects plaintiffs' entitlements thereunder shall be permitted.
2. The Commissioner of the Department ("Department" herein means the Department of Education as defined by AS 14.07.010, sec. 1, ch. 98 SLA 1966) shall designate a person who shall be responsible for administering the implementation of this Consent Decree. This person shall have such administrative authority, fiscal resources and staff support, including clerical assistance, as are necessary effectively to administer this decree. Attorneys for the plaintiffs shall be entitled to frequent access to this person to review and make inquiries regarding the implementation of this decree.
3. The Department shall ensure that no later than November 1, 1976, the governing body of the appropriate school district shall notify the residents of all communities identified in Schedule B, attached hereto, of the community's entitlement to a secondary school, pursuant to 4 AAC 05.040. The Department shall require that the governing body of the school district, at the time it provides written notification, file with the Commissioner a copy of such written notice (or, if a form is used a copy of such form), together with a statement of the date(s) such notification was provided to each community. On request of the local school committee in any community identified in Schedule B, attached hereto, the Department shall within a reasonable time conduct a meeting in such community at which the entitlements secured by this decree will be explained. In any community which requests that a secondary school not be conducted in such community, the Department shall, in any subsequent school year, on request of the local school committee, promptly conduct such a meeting.
4. The Department shall conduct an inventory during 1976 in all communities identified in Schedule B attached hereto, except those which have expressed their opposition to a secondary school in accordance with 4 AAC 05.050, of public facilities which could be converted, either temporarily or permanently, into secondary classroom space. In conducting this inventory, the Department shall contact the local school committee in each village, and shall incorporate in the inventory report the committee's view regarding the conversion of facilities to secondary classroom space.
5. The Department shall prescribe by regulation that the governing body of a school district, with the assistance of the local school committees, shall conduct, no later than June 1, 1977, and May 1 of each subsequent school year, a survey of secondary school-age children who are not enrolled in school. The Department shall require that the information gathered by each survey shall be submitted to the Department by the governing body of the school district. The Department shall ensure that the governing body of the school district establishes a program to encourage each secondary school-age child who is not enrolled in secondary school, as identified in the annual survey, to finish secondary school.
6. The Department shall secure compliance with the provisions of 4 AAC 05.040 regarding the establishment of local secondary schools in accordance with the following schedule:
 - (a) In any community wherein there is available a suitable facility in which to conduct a local secondary school (or certain grades thereof), a local secondary school (or those grades which can be reasonably accommodated in

the facility) shall be established as soon as practicable, with classes commencing no later than Fall, 1977.

(b) In any community where an existing public facility may be temporarily rendered suitable by means of renovation at a cost not to exceed \$10,000, the renovation, subject to the availability of funds, shall be undertaken and a secondary school shall thereafter be established as soon as practicable.

(c) In any community, wherein there is available no suitable facility in which to conduct a local secondary school, and wherein no existing public facility may be rendered suitable by renovation under subparagraph (b) above, major renovation will be undertaken or a new secondary school facility shall be constructed as soon as practicable. The Department shall take all reasonable steps to ensure that construction of each such secondary school facility for which construction funds are provided in a 1976 bond issue is completed no later than Fall, 1977, or, if such facility is designated on Schedule C, attached hereto, as a major facility, no later than Fall, 1978; and that each such secondary school facility for which construction funds are provided in a 1978 bond issue is completed no later than Fall, 1979, or if such facility is designated on Schedule C, attached hereto, as a major facility, no later than Fall, 1980.

7. The Department agrees that money presently available to the State for rural secondary school construction, heretofore unexpended, shall be expended at the sites specified in Schedule D, attached hereto, in the amounts necessary to provide at each site a comprehensive secondary education facility, which shall include, but not necessarily be limited to, academic classrooms, facilities appropriate for instruction in vocational education and home economics, indoor physical education space and related support facilities and mechanical space. The Department further agrees and represents that construction of facilities at these sites shall be completed no later than Fall, 1977.

8. (a) Funds from ch. 131 SLA 1976 shall be utilized in a total amount not less than \$20,000,000 for the purpose of paying the costs of rural secondary school construction. The parties recognize that the Department cannot guarantee passage of this bond issue by the voters. If this bond issue is not passed, the plaintiffs reserve their remedies under law.

(b) The Department shall exercise its best efforts to secure legislative approval of an act providing for the issuance of general obligation bonds in an amount not less than the sum of \$20,570,000 (multiplied by the appropriate inflationary factor derived in accordance with subparagraph (d) below) and the amount, if any, determined pursuant to paragraphs 12 and 13 below, for the purpose of paying the costs of rural secondary school construction at the sites set forth in Schedule C, and at the sites and in the amounts determined pursuant to paragraphs 12 and 13, and providing that the question of whether such bonds shall be issued shall be submitted to the voters at the State general election in November, 1978. Such best efforts shall include, but not necessarily be limited to, recommending, in the Governor's Capital Budget for Fiscal Year 1979, construction of rural secondary schools at the sites set forth in Schedule C and those determined pursuant to paragraphs 12 and 13, and good faith testimony before the legislature by appropriate personnel of the Department on behalf of such recommendations. The Department represents that it has consulted with the Governor as to the provisions of this Consent Decree, and that the Governor is committed to securing approval by the legislature, and thereafter by the voters, of a bond issue in an amount not less than the sum of \$20,570,000 (multiplied by the appropriate inflationary factor) and the amount, if any, determined pursuant to paragraphs 12 and 13, below, for the purpose of paying the costs of rural secondary school construction at the sites designated herein. The parties recognize that the Department cannot guarantee passage of a bond issue by either the legislature or the voters. If a bond issue is not passed, or if lesser amounts are made available the plaintiffs reserve their remedies under law.

(c) In the event the voters approve ch. 131 SLA 1976, the sum to be recommended pursuant to subparagraph (b), above, in the Governor's Capital Budget for Fiscal Year 1979 may be reduced as follows: the amount of \$20,570,000 set forth in subparagraph (b) above, may be reduced by subtracting therefrom amounts, if any, in excess of \$20,000,000 which are utilized in accordance with this decree.

(d) The inflationary factor to be applied to the amounts set forth in Schedule C, for the purpose of determining amounts to be made available in a 1978 bond issue, shall be computed according to the formula, $I = 1 + r_1 + r_2$

$(1 + r_1)$ in which:

(1) I = the inflationary factor;

(2) r_1 = the rate of increase in average building construction costs in

Alaska in the 12 months preceding November, 1976; and

(3) r_2 = the rate of increase in average building construction costs in

Alaska in the 12 months preceding November, 1977.

The rate of increase in average building construction costs shall be computed as the product obtained from multiplying 1.25 by the percent change in building construction costs in the Seattle metropolitan area, as reported by Dodge Building Cost Services, McGraw-Hill Systems Company, or shall be determined by such other means to which the parties, through their attorneys, may hereafter agree.

9. Rural secondary school construction funds made available pursuant to paragraph 8, above, shall be utilized as follows:

(a) Sufficient funds shall be made available to ensure, at each of the 37 "Major Construction Sites" set forth in Schedule C, the provision of comprehensive secondary education facilities at each site, which shall include, but not necessarily be limited to, academic classrooms, facilities appropriate for instruction in vocational education and home economics, indoor physical education space and related support facilities and mechanical space. Such facilities shall in other respects conform to Minimum Guidelines for the construction of small secondary schools, hereafter to be promulgated by the Department.

(b) Sufficient funds shall be made available to ensure, at each of the 35 sites designated in Schedule C as "Construction Sites for Projected Enrollments of 11 - 20 Students," the provision of secondary education facilities including classroom and indoor physical educational space and related support facilities and mechanical space. The funds may be used for construction of new secondary facilities or renovation of existing public facilities.

(c) Sufficient funds shall be made available to ensure, at each of the 36 sites designated in Schedule C as "Sites of Minimal Construction or Renovation," the provision of adequate secondary classroom space. The funds shall be expended for the construction of secondary education facilities or the renovation of existing public facilities.

10. Residents of each community in which a facility is to be constructed or renovated pursuant to this decree shall be afforded an opportunity, prior to final approval of the architectural plan for such construction or renovation, to present their ideas on the design of the facility in their community. Such ideas shall, to the extent practicable, be incorporated into the architectural plan. To the maximum extent consistent with education needs, a design for a school building constructed pursuant to this decree shall provide for multiple use of the building for community purposes.

11. Any resident of a community specified in Schedules C or D who is between the ages of 20 and 25 and has completed the 8th grade but has not completed the 12th grade shall be entitled for the purpose of earning a high school diploma to attend, without payment of tuition, the local secondary school established in his community pursuant to this decree.

12. Should additional funds be necessary for the provision of adequate secondary school facilities, pursuant to paragraph 9 and 4 AAC 05.040, at any location in the unorganized borough whether or not such location is specified in Schedule C, the Department shall seek additional capital funds in sufficient time to permit construction of such facilities to commence no later than Spring, 1979.

13. In determining whether additional funds are necessary, pursuant to the preceding paragraph, the Department shall take the following steps:

(a) The Department shall prepare a report, which shall be filed with the court and provided to attorneys for the plaintiffs no later than September 1, 1977, setting forth in reasonable detail the information upon which the Department has based or intends to base its determination. The Department shall make available to attorneys for the plaintiffs such additional information as reasonably bears upon the determination.

(b) The Department shall, at the time the Department submits its capital budget request for Fiscal Year 1979 to the Department of Administration, provide to attorneys for the plaintiffs a copy of such budget request, together with the report (unless such information is plainly set forth in the capital budget request) of the amounts, by site, for which the Department is requesting funding pursuant to this decree.

(c) In the event that plaintiffs object that the amounts for secondary school construction which the Department has determined to be necessary, under the provisions of this paragraph, are insufficient in any respect, the plaintiffs shall within 21 days of the filing by the Department of the reports required by this paragraph, file with the court, and provide to the Department, plaintiffs' objections to the Department's determinations. If objections have been filed, the Department's capital budget request shall not be submitted to the legislature until the court shall have determined, after notice and hearing, the amounts which shall be included in such budget request in order to carry out the provisions of paragraph 12 of this decree.

14. The Department shall revise the Small Secondary Schools Administrative Manual, First Edition, September, 1971, to accord with the provisions of this decree.

15. The Department shall exercise its best efforts to ensure that no school, required by this decree, fails to operate because of a shortage of teacher housing. However, nothing in this paragraph shall be interpreted as requiring the Department to provide teacher housing directly.

16. The Department shall file with the court, and provide to attorneys for plaintiffs, reports every four months regarding the Department's progress in implementing this decree. The first such report shall be filed within four months of the date on which this decree is approved by the court. Each report shall specify in reasonable detail the actions taken to implement each provision of this decree, except that no further report need be made as to any provision which has been fully implemented. Each report shall describe progress made in planning and executing construction at each site specified on Schedule C. Each report shall include a copy of the materials received or prepared by the Department (unless such copy was included with a previous report) which are specified in the provisions of paragraphs 1, 3, 4, and 5 of this Consent Decree.

17. The Department shall exercise its best efforts to make available, during Fiscal Year 1977, a minimum of \$100,000 for the implementation of this decree. Such sum shall be utilized solely for the purpose of providing grants to local districts for the renovation of existing public facilities for the purpose of operating, during the 1976-77 school year, secondary school programs in any community specified in Schedule C. Any unexpended balance of this amount shall thereafter be available to implement the provisions of this decree.

18. The court shall retain jurisdiction of this action until such time as the construction provided for herein has been substantially completed at each of the sites on Schedule C and the other provisions of this Consent Decree have been substantially fulfilled. On or about October 1, 1980, there shall be a general review of the progress to determine whether, in light of said progress, the jurisdiction of the court over this case shall terminate.

19. The parties agree that it is desirable to minimize, where possible, judicial involvement in the internal affairs of the Department. Therefore, the parties agree to make good faith efforts to resolve by negotiation all disagree[ment] arising under this Consent Decree.

20. The parties agree that all of the foregoing provisions of this Consent Decree are contingent upon the approval by the voters of the issuance of general obligation school construction bonds as provided in ch. 131 SLA 1976. In the event said bond issue fails of passage and funds are not available to carry out the commitments made in

