

**HJR**

**16**

<TARGET><BILL>HJR 16</BILL><SUBJECT>HJR  
16</SUBJECT><COMM>HJUD27</COMM></TARGET>

# ALASKA STATE LEGISLATURE

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**Session:**

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## REPRESENTATIVE WES KELLER DISTRICT 14 SPONSOR STATEMENT

### HJR 16

#### **“Proposing amendments to the Constitution of the State of Alaska relating to state aid for education.”**

For 50 years the State of Alaska has grown from a vast frontier into an important player in the nation and the world. While this is a fair assessment of ourselves, it does not address a growing need for quality higher education in the state. We have and continue to do everything possible for our university system, but that has, to a point, been at the expense of other private institutions of higher learning.

HJR 16 opens some of these doors for both public and private education by allowing the release of funds to more than just public schools. This Constitutional Amendment allows those students seeking to excel in secondary and post secondary education to attend a school that meets their needs.

This resolution is on the table with HB 145, but the language in this resolution goes far beyond this bill. It takes into account state sponsored scholarships for all students regardless of financial position. It says we support higher education for our youth at the best possible college, university or vocational program. Alaska has a wealth of educational opportunities that need our support. We do not need another Sheldon Jackson disaster.

HJR 16 is language that needs to be placed in front of the Alaska voters so they may decide on the future of higher education in the state.

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## **AS 14.17.410. Public School Funding.**

(a) A district is eligible for public school funding in an amount equal to the sum calculated under (b) and (c) of this section.

(b) *Public school funding consists of state aid, a required local contribution, and eligible federal impact aid determined as follows:*

(1) state aid equals basic need minus a required local contribution and 90 percent of eligible federal impact aid for that fiscal year; basic need equals the sum obtained under (D) of this paragraph, multiplied by the base student allocation set out in AS 14.17.470 ; district adjusted ADM is calculated as follows:

(A) the ADM of each school in the district is calculated by applying the school size factor to the student count as set out in AS 14.17.450 ;

(B) the number obtained under (A) of this paragraph is multiplied by the district cost factor described in AS 14.17.460 ;

(C) the ADMs of each school in a district, as adjusted according to (A) and (B) of this paragraph, are added; the sum is then multiplied by the special needs factor set out in AS 14.17.420 (a)(1);

(D) the number obtained for intensive services under AS 14.17.420(a)(2) and the number obtained for correspondence study under AS 14.17.430 are added to the number obtained under (C) of this paragraph;

(2) the required local contribution of a city or borough school district is the equivalent of a four mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110 , not to exceed 45 percent of a district's basic need for the preceding fiscal year as determined under (1) of this subsection.

(c) In addition to the local contribution required under (b)(2) of this section, a city or borough school district in a fiscal year may make a local contribution of not more than the greater of (1) the equivalent of a two mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110 ; or

(2) 23 percent of the district's basic need for the fiscal year under (b)(1) of this section.

(d) State aid may not be provided to a city or borough school district if the local contributions required under (b)(2) of this section have not been made.

(e) If a city or borough school district is established after July 1, 1998, for the first three fiscal years in which the city or borough school district operates schools, local contributions may be less than the amount that would otherwise be required under (b)(2) of this section, except that

(1) in the second fiscal year of operations, local contributions must be at least the greater of

(A) the local contributions, excluding federal impact aid, for the previous fiscal year; or

(B) the sum of 10 percent of the district's eligible federal impact aid for that year and the equivalent of a two mill tax levy on the full and true value of the taxable real and personal property in the city or borough school district as of January 1 of the second preceding fiscal year, as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110 ; and

(2) in the third year of operation, local contributions must be at least the greater of

(A) the local contributions, excluding federal impact aid, for the previous fiscal year; or

(B) the sum of 10 percent of the district's eligible federal impact aid for that year and the equivalent of a three mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110 .

(f) A school district is eligible for additional state aid in the amount by which the local contributions that would otherwise have been required under (b)(2) of this section exceed the district's actual local contributions under (e) of this section.

# FISCAL NOTE

**STATE OF ALASKA**  
**2011 LEGISLATIVE SESSION**

Fiscal Note Number 1  
 Bill Version HJR 16  
 (H) Publish Date 4/6/11

Identifier (file name) HJR016-OOG-DOE-3-17-11 Dept. Affected Office of the Governor  
 Title Constitutional amendment relating to state aid Appropriation Elections  
for education Allocation Elections  
 Sponsor Representative Keller  
 Requester House Education Committee OMB Component Number 21

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | Appropriation Required | Information |            |            |            |            |            |
|------------------------|------------------------|-------------|------------|------------|------------|------------|------------|
|                        | FY 2012                | FY 2012     | FY 2013    | FY 2014    | FY 2015    | FY 2016    | FY 2017    |
| Personal Services      |                        |             |            |            |            |            |            |
| Travel                 |                        |             |            |            |            |            |            |
| Services               |                        |             | 1.5        |            |            |            |            |
| Commodities            |                        |             |            |            |            |            |            |
| Capital Outlay         |                        |             |            |            |            |            |            |
| Grants                 |                        |             |            |            |            |            |            |
| Miscellaneous          |                        |             |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b>             | <b>0.0</b>  | <b>1.5</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                             |  |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|--|

|                           |  |  |  |  |  |  |  |
|---------------------------|--|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES</b> |  |  |  |  |  |  |  |
|---------------------------|--|--|--|--|--|--|--|

**FUND SOURCE** (Thousands of Dollars)

| FUND SOURCE              | FY 2012    | FY 2012    | FY 2013    | FY 2014    | FY 2015    | FY 2016    | FY 2017    |
|--------------------------|------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts    |            |            |            |            |            |            |            |
| 1003 GF Match            |            |            |            |            |            |            |            |
| 1004 GF                  |            |            | 1.5        |            |            |            |            |
| 1005 GF/Program Receipts |            |            |            |            |            |            |            |
| 1037 GF/Mental Health    |            |            |            |            |            |            |            |
| Other (please identify)  |            |            |            |            |            |            |            |
| <b>TOTAL</b>             | <b>0.0</b> | <b>0.0</b> | <b>1.5</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2011) cost \_\_\_\_\_

**POSITIONS**

|           |  |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |  |

Why this fiscal note differs from previous version (if initial version, please note as such)

Prepared by Gail Fenumiai, Director  
 Division Division of Elections  
 Approved by Linda J. Perez, Administrative Director  
Administrative Services

Phone 465-2644  
 Date/Time 3/17/2011, 3:08pm  
 Date 3/17/2011

**FISCAL NOTE #1**

**STATE OF ALASKA  
2011 LEGISLATIVE SESSION**

**BILL NO. HJR 16**

Passage of this resolution would require the constitutional amendment to appear on the 2012 general election ballot. The cost of providing information about the constitutional amendment in the Official Election Pamphlet, as required by AS 15.58, is \$1.5. Should the addition of this question require printing an 8-1/2 by 18 inch ballot, the cost will increase to \$22.0.

**HOUSE BILL NO. 145**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

**BY REPRESENTATIVE KELLER**

**Introduced: 2/9/11**

**Referred: Education, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act establishing the parental choice scholarship program to be administered by**  
2 **school districts for the purpose of paying the cost of attending grades kindergarten**  
3 **through 12 at public and private schools; and providing for an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 \* **Section 1.** AS 14 is amended by adding a new chapter to read:

6 **Chapter 31. Parental Choice Scholarship Program.**

7 **Sec. 14.31.010. Parental choice scholarship program established.** The  
8 parental choice scholarship program is established for the purpose of providing public  
9 funding of the cost of attending grades kindergarten through 12 at a public or private  
10 school selected by the student's parent or legal guardian. Each school district shall  
11 administer the program under the provisions of this chapter.

12 **Sec. 14.31.020. Scholarship amount and eligibility.** (a) A public school in  
13 the state may receive a scholarship under the parental choice scholarship program on  
14 behalf of a student who attends the school, regardless of the attendance area in the

1 school district in which the student resides.

2 (b) A private school qualifies to receive funding under the parental choice  
3 scholarship program if the school

4 (1) submits an application to the district in which the school is located  
5 on a form approved by the district indicating that the school intends to participate in  
6 the program;

7 (2) meets the accountability and enrollment standards under  
8 AS 14.31.025; and

9 (3) complies with AS 14.45.030 or 14.45.110 - 14.45.130 and  
10 academic accountability standards that include nondiscriminatory practices and  
11 regular reports to each student's parent or legal guardian on the student's progress.

12 (c) Notwithstanding the calculations required under AS 14.17, the district shall  
13 pay to a qualified school attended by the student under this section a parental choice  
14 scholarship that is equal to the lesser of

15 (1) the amount the school district in which the student resides would  
16 receive under AS 14.17 for a similarly situated student to attend a public school in the  
17 district, except that the amount may not exceed 100 percent of the funding the school  
18 receives and expends from all state and local sources for the student; or

19 (2) the actual annual cost to the school of educating the student,  
20 including prorated facility and operating expenses.

21 (d) If a parent or legal guardian has selected a public school outside of the  
22 attendance area in which the student resides for a scholarship under this section, the  
23 school district in which the student resides may contribute to the reasonable costs of  
24 transporting the student to the scholarship recipient school the state aid available under  
25 AS 14.09.010 for transportation of the student.

26 (e) A scholarship received for the benefit of a student under this section must  
27 be used for educational purposes. A scholarship is transferable among participating  
28 schools.

29 (f) A participating school shall include students who are enrolled under this  
30 section in the student count for purposes of calculating state aid under AS 14.17.610.

31 **Sec. 14.31.025. Accountability and enrollment standards for a**

1 **participating school.** (a) A district shall approve a school for participation in the  
2 parental choice scholarship program if the school

3 (1) operates in compliance with all applicable federal and state laws  
4 pertaining to health and safety;

5 (2) does not discriminate in its admission and hiring practices as  
6 prohibited under AS 14.18.010 - 14.18.100;

7 (3) admits students based on a random selection process, except that  
8 the school may apply a preference for siblings;

9 (4) requires criminal history background checks as provided under  
10 AS 12.62.400 for all individuals who are employed in or otherwise work in the school;

11 (5) if a private school, meets the following financial accountability  
12 standards:

13 (A) submits to the district an annual financial report that  
14 complies with uniform financial accounting standards approved by the district;

15 (B) submits to the district an annual auditor's report that the  
16 financial report provided under (A) of this paragraph is

17 (i) free of material misstatements;

18 (ii) fairly represents the actual annual per pupil costs  
19 claimed under the program; and

20 (iii) limited to records considered necessary to provide  
21 the report;

22 (C) demonstrates the school's financial ability to repay to the  
23 district any overpaid scholarship funds.

24 (b) A participating school is autonomous and may not be subject to additional  
25 regulation by the state unless authorized under AS 14.31.010 - 14.31.090.

26 **Sec. 14.31.035. District duties.** (a) In implementing the parental choice  
27 scholarship program, the district shall

28 (1) make scholarship payments directly to the school quarterly after  
29 receiving proof satisfactory to the district that the student claimed under a scholarship  
30 attends the school on a full-time basis;

31 (2) make available to students and students' parents or guardians a list

1 of schools that have been approved to participate in the program; and

2 (3) provide a standard application for use by a school to enroll a  
3 student under the program; a school may, however, supplement the application.

4 (b) If the district denies an application or revokes approval of a school to  
5 participate in the program, the district shall, after administrative and judicial appeal  
6 periods have lapsed, immediately notify the affected students and the students' parents  
7 or guardians.

8 **Sec. 14.31.040. Regulations.** The department shall adopt regulations necessary  
9 to carry out the program, including

10 (1) timelines that will result in the highest number of student and  
11 school participation;

12 (2) procedures for calculating for and distributing scholarships;

13 (3) procedures for application, renewal, and appeal for participating  
14 schools and students; and

15 (4) standards for approval, revocation, and denial for participating  
16 schools.

17 **Sec. 14.31.045. Appropriations for scholarships.** The legislature may  
18 appropriate parental choice scholarship program funds to the department for  
19 distribution to the districts. If the appropriation for the program is insufficient in a  
20 given fiscal year, the department shall distribute the available funds to the districts  
21 prorated by the number of participating students in the program.

22 **Sec. 14.31.090. Definitions.** In this chapter,

23 (1) "district" has the meaning given in AS 14.17.990;

24 (2) "private school" means a school located in the state that provides  
25 education to students attending grades kindergarten through 12, or any combination of  
26 those grades, and that does not receive direct state, local, or federal funding, except  
27 parental choice scholarship funding;

28 (3) "program" means the parent choice scholarship program;

29 (4) "student" means a person residing in the state who is at least five  
30 years of age but not more than 21 years of age.

31 \* **Sec. 2.** This Act takes effect July 1, 2012.

## Court's ruling won't end all voucher issues

Apr 6, 2011|

The U.S. Supreme Court decision issued Monday gives us a glimpse into how school voucher programs in Indiana -- and other states -- might one day look.

Tax-credited contributions made to an Arizona scholarship organization that provides tuition scholarships to secular and religious schools can not be sued for violating the establishment clause, the court ruled Monday.

The court ruled in 2002 that school vouchers, even those that went to religious schools, do not violate the First Amendment clause often referred to as separation of church and state.

So as far as the U.S. law is concerned, school vouchers for parochial schools and tax-credited scholarship contributions that might fund students' tuition at religious-based schools are kosher.

But state laws are a different matter, and one shouldn't expect school voucher issues to be settled or go unchallenged in Indiana or in other states grappling with education reforms.

House Democrats' six-week walkout failed to stop House Bill 1003, the school voucher bill, which continues to wind its way through the General Assembly.

Proponents and opponents of House Bill 1003 speculate how it will change Indiana public and private schools for the better or worse. But in reality, House Bill 1003 is not likely the panacea proponents tout it to be, and it's not the nail in public education's coffin that opponents claim. But it is a potential game changer for both public and private institutions.

If it becomes law, school vouchers will influence how Hoosier children are educated. And since no bill is perfect, the voucher system would likely need tweaking in years to come.

While acknowledging Indiana's education system needs reform, we've not been quick to jump on the school voucher bandwagon -- nor are we doing that today. There are too many questions left unanswered. But it appears the Republican-controlled General Assembly is bent on making school vouchers the law.

If school vouchers are approved, Hoosiers should expect lengthy legal challenges, including whether vouchers comply with Indiana's Constitution. If the U.S. Supreme Court is any indicator, it is likely school vouchers are not the constitutional aberration some paint them to be. If this is the case, the question is whether they are as effective as some claim they are. That remains unknown as of now.

When these cases are inevitably filed, people are likely to barricade themselves behind tired arguments. In the rush to defend their positions, we hope both sides remember that the status quo in education is not working in Indiana -- or anywhere else. To find what might work requires change, and change is never easy to entrenched institutions.

## Court ruling on school money stirs voucher bill debate

By: [MIKEL LIVINGSTON](#) [mlivingston@jconline.com](mailto:mlivingston@jconline.com) 8:30 PM, Apr. 5, 2011

U.S. Supreme Court ruling this week is already stirring debate on possible ramifications of controversial legislation that would create a school voucher program in Indiana.

On Monday the Supreme Court ruled 5-4 that ordinary taxpayers cannot challenge government programs that use tax breaks to direct money to religious activities. The ruling was directed at an Arizona scholarship program that has mainly benefited religious schools through tax breaks.

Opponents of private school vouchers, including those promoted by Indiana House Bill 1003, fear the ruling will make it more difficult to use federal courts to claim violations of the Constitution's prohibition on direct government aid to religion.

Chris McGrew, a former consultant for the Indiana Department of Education and former board member for the Indiana Coalition for Public Education, said the ruling will "embolden" and "empower" voucher supporters.

Arizona's program has allowed residents to send up to \$500 to a tuition scholarship organization that they would have otherwise paid the state in taxes on their incomes, the bulk of which has gone to private religious schools.

Justice Anthony Kennedy wrote the Supreme Court's majority opinion, saying that because the program operates as a tax credit, instead of a direct appropriation of government money, "contributions result from the decisions of private taxpayers regarding their own funds."

Justice Elena Kagan, who voted against the ruling, predicted lawmakers elsewhere would adopt the "road map" Kennedy provided to subsidize religion without facing judicial review.

But McGrew said differing details in the bill will give some legal leverage.

"Constitutionally the ruling in Arizona is different enough, (the Indiana program) will come before the courts," McGrew said. "I just hate that taxpayers and our schools and students are going to have to pay for it."

Last week, Indiana House Democrats failed with an amendment that would have limited the vouchers to only students attending failing schools.

That amendment was defeated and the bill passed, moving to the Senate. The bill will be discussed by the Senate Education and Career Development Committee later today.

If passed in its current form, Indiana's scholarship program would not be limited to lower-income families, special need students or students in failing schools, making it the broadest voucher program in the nation. The program would be open for families earning up to \$60,000 a year and within three years there would be no limit on the number of children who could enroll.

William McLauchlan, a Purdue University associate professor, has written extensively on the Indiana state constitution and the judicial behavior of Supreme Court justices. He said he believes Indiana's voucher bill violates both the state and federal constitutions.

McLauchlan said it's a near guarantee the voucher bill will be protested in court if passed, and he anticipates the Indiana Supreme Court would rule against it.

"I can't imagine, if it is a raw use of public funds for a system that supports private educational institutions, that it will stand the test, but there's no telling for sure," McLauchlan said.

Some private school leaders have also expressed reservations about the plan, but for different reasons.

Lafayette Christian School Principal Ken Goff said he and his staff are waiting for more specifics on the proposal before forming an opinion.

"We are still mixed on it," Goff said. "There are still a lot of details not specified yet. We want to make sure we can remain a private Christian school as we are."

Goff said maintaining the independence of a private school remains paramount.

"We're accredited by the state, so we take ISTEPs and we're accountable with that, but we do have some freedom as we are a private school," Goff said. "We just want to be sure if we accept (vouchers) we can keep that autonomy."

Monday's ruling and a 2002 decision that upheld the use of vouchers "should give state legislatures wide discretion in adopting school choice programs," said Tim Keller, executive director of the Arizona chapter of the Institute for Justice. The group represented both religious and secular scholarship organizations that receive the tax money.

"School choice programs are not about aiding religion," Keller said. "They're aimed at helping individual families."

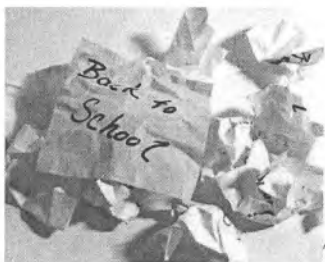
Contributing: Associated Press

*Published on Monday, September 13, 2010 by Rethinking Schools*

## **The Proving Grounds: School “Reform” in Washington, D.C.**

**by Leigh Dingerson**

Washington, D.C., is leading the transformation of urban public education across the country—at least according to Time magazine, which featured D.C. Schools Chancellor Michelle Rhee on its cover, wearing black and holding a broom. Or perhaps you read it in Newsweek or heard it from Oprah, who named Rhee to her “power list” of “remarkable visionaries.”



The model of school reform that’s being implemented here is popping up around the country, heavily promoted by the same network of conservative think tanks and philanthropists like Bill Gates, Eli Broad, and the Walton Family Foundation that has been driving the school reform debate for the past decade. It is reform based on the corporate practices of Wall Street, not on education research or theory. (photo by Flickr user Avolore)

But there’s nothing remarkably visionary going on in Washington. The model of school reform that’s being implemented here is popping up around the country, heavily promoted by the same network of conservative think tanks and philanthropists like Bill Gates, Eli Broad, and the Walton Family Foundation that has been driving the school reform debate for the past decade. It is reform based on the corporate practices of Wall Street, not on education research or theory. Indications so far are that, on top of the upheaval and distress Rhee leaves in her wake, the persistent racial gaps that plague D.C. student outcomes are only increasing.

Chancellor Rhee helicoptered into Washington in 2007 promising to change the culture of the District of Columbia Public Schools (DCPS). Everyone cheered. But we weren’t counting on the new culture coming straight out of Goldman Sachs. Suddenly, decisions were being made at the top and carried out with atomic force. Parents have been treated like consumers—informed about options and outcomes but denied a seat at the table. The district’s teachers have been insulted in the national media, fired or laid off in record numbers, and replaced by less credentialed and less experienced newcomers. The model views teachers as a delivery system, not as professionals. High turnover is not just the result—it’s the goal. Principals, too, are isolated and expendable. The district lauds the educational mavericks—principals whose “crusades” are described as “relentless” and “methodical”—those who see themselves as an army of one. We are becoming a district where the frontline workers are demoralized, people are looking out for themselves, and trust is all but gone.

Chancellor Rhee is the army of one at the top of the district’s lurching reform. An articulate and supremely confident 39-year-old, Rhee is, for now, the movement’s national poster child. Pundits debate her occasionally tactless comments in the media, but there has been little analysis of the reform model itself and how its “my way or the highway” culture affects students, parents,

and teachers. Adopting the rhetoric for just one moment, in a cost-benefit analysis, are D.C. students gaining the benefits, or are we all paying the price?

### **The Proving Grounds**

DCPS has a reputation as one of the worst school systems in the nation. But it has not always been so troubled.

Washington, with its gleaming white facades and manicured parks, is home to a complicated mix of people and politics. Long a majority African American city, D.C. has only been self-governing since 1973, when a 100-year-long fight for home rule forced Congress to hold elections for the city's mayor and city council. Congress still reviews all legislation passed by the council before it becomes law and retains authority over the District budget.

The vast public sector employment created by the federal government helped establish a significant black middle class that supported its public schools. Many African American parents and grandparents remember *their* schools as neighborhood institutions and gateways to success. But many of D.C.'s middle-class blacks have left for suburban counties in Maryland and Virginia. What remains is a city with stark divisions—some of the most affluent neighborhoods in the nation, and some of the poorest.

Most of D.C.'s public schools are intensely segregated—like the city's neighborhoods. Though DCPS uses a traditional neighborhood boundary system, students from anywhere in the city may enter a lottery for available seats in any school after neighborhood enrollment is complete. At the elementary level, most schools reflect the demographics of their communities. But in the city's more affluent western wards, white parents begin pulling their children out of DCPS before middle school, sending them to one of the city's boutique charters or elite private schools. The availability of "out-of-boundary" slots increases, making middle and high schools in these neighborhoods the most integrated in the city. Every D.C. high school is majority students of color.

Many of the District's African American and Latino children are from economically isolated and badly neglected communities. For decades, there have been too few resources and too much infighting to support those communities and help their children succeed. Rather than digging deep to address the social, economic, and educational issues involved, however, District leadership has focused on attracting young white professionals back to the urban core. In the late '90s and early 2000s, construction cranes towered over the skyline as block after city block became home to yet another luxury condominium complex. These "urban pioneers"—mostly young, white professionals—have begun to staunch the city's declining population numbers. As they've settled in, they've also become players in school politics.

The current wave of education reform began with Adrian Fenty, a young and energetic city council member, born and raised in D.C. Elected in 2000 at the age of 30, Fenty proved to be a charismatic and effective politician, and was reelected without opposition in 2004. In September 2006 he easily won the Democratic primary for mayor. In hugely Democratic D.C., the primary

is, for all intents and purposes, the general election. It was only *after* his September victory that Fenty announced his plan to take over the District's schools.

### **Day One: Teachers Feel the Heat**

The day after he took office in January 2007, Fenty introduced legislation to eliminate the city's elected school board and consolidate control of the schools in the mayor's office. The council passed the bill in April, and submitted it for congressional approval. Both the House and Senate approved the bill in May, and it was signed into law by then-President Bush on June 1. Twelve days later, Fenty held a press conference to introduce his new chancellor, Michelle Rhee.

Rhee had just three years of teaching experience, through Teach for America, and no experience running a school, let alone a school system. After dipping her toes in teaching, Rhee had gone on to found and lead the New Teacher Project, an organization that collaborates with school districts to recruit, train, and develop teachers for high-needs schools.

Rhee lost no time proclaiming what was wrong in D.C.: "I know what the obstacles are in these systems that are not conducive to effecting change," Rhee said at the press conference.

The implications of her pronouncement were not lost on those who had been following the national education debate. Over the past decade, research funded by conservative foundations has systematically built a case for transforming teaching as a profession. It began with research connecting "high-quality" teachers to student academic gains. Therefore, pundits began to surmise, low-performing students must just have lazy or incompetent teachers. Once teachers were to blame, it was a hop, skip, and a jump to find the culprit—teachers' unions and collectively bargained contracts that guarantee teachers due process before dismissal. The rhetorical attack on teachers has been shrill enough to stifle what the *rest* of the decade's research has shown: that teachers generally get *better* with experience and support; that meaningful parent engagement, strong school leadership, and student-centered learning climates must also be present for schools to succeed; and that no single component by itself can carry a school and its students to their full potential.

Amidst the clamor of teacher bashing, some D.C. teachers experienced Rhee's comments as a bull's-eye drawn on their backs. "We were troubled by her remarks," recalls Kerry Sylvia, a veteran teacher at the city's Cardozo High School. It seemed clear that the "obstacles" that Rhee was referring to were district teachers.

### **Sweeping Change**

In her first months, Rhee demonstrated the frenetic pace of activity that has become her trademark. In the southern heat and humidity of a D.C. summer, Rhee crisscrossed the city, meeting with principals and cutting through the district's legendary red tape. Warehouses full of textbooks were emancipated, classrooms stocked. Checks were cut, paint was slapped on, and creaky gears started turning. Many—including principals and parents—were impressed. By the time school started, there was a palpable feeling of forward motion.

At the same time, Rhee was meeting privately with officials from the Gates and Broad foundations, the California-based NewSchools Venture Fund, the American Enterprise Institute, and other key players in the school reform movement. Adrian Fenty and Chancellor Rhee were their new darlings.

That spring, Rhee began firing principals. Sixty-one principals and assistant principals were fired at the end of the school year. Next came the teachers. By July of 2008, according to some reports (neither DCPS nor the Washington Teachers' Union will release actual numbers), Rhee had fired 250 teachers and 500 teachers aides, avoiding union due-process rules by utilizing the "highly qualified" certification requirements of the federal No Child Left Behind Act.

In October, stymied by her inability to negotiate a contract with the union (she wanted, among other things, new provisions in the contract to make it easier for her to fire teachers), Rhee announced that she would implement a little-used procedure allowing principals to place teachers on a 90-day "improvement plan," with the ability to fire them immediately after that.

### **All the Blame, Not Enough Support**

It is worth noting that, as a so-called "education reformer," Rhee has not focused on content or pedagogy. There have been no initiatives to improve teacher induction or strengthen instructional practice. The focus has remained on management and staffing, and the tone has been judgmental rather than supportive.

One of Rhee's early priorities was to establish a new teacher evaluation system that would, in part, make it easier to fire teachers based on their students' performance on standardized tests. It's the latest Wall Street concept embraced by the reformers. Indeed, U.S. Secretary of Education Arne Duncan has proposed that federal funding be contingent upon states developing teacher evaluations directly linked to student test scores. Rhee hoped to set the standard.

Her "director of human capital strategy" took the lead in designing the new system, called IMPACT. It was launched in the 2009–10 school year and again put Rhee into the national spotlight.

IMPACT is a complicated web of more than 20 separate evaluation processes. For teachers unlucky enough to teach subjects and grade levels with test data, 50 percent of their evaluation is based on a patently preposterous calculation of their effect on student scores. Teachers also undergo five short observations by their principal or a "master teacher," based on an extensive "teaching and learning framework" with dozens of indicators. One of the biggest concerns has been that IMPACT will snare some of the district's best teachers in its web—those who refuse to teach to the tests or conform to a checklist of specific practices. The Washington Teachers' Union was worried enough to demand a working group to monitor IMPACT's implementation and results.

Meanwhile, after three years of contentious negotiation, the union and the chancellor announced agreement on a new contract in the spring of 2010. The contract attached bonus money to teacher evaluations and included a significant increase in salaries (ratification of the new contract was

stalled briefly when it was revealed that the salary increases were being funded with \$64.5 million in one-time grants from the Broad and Walton foundations, among others, and that the grants were predicated on Rhee continuing as chancellor).

Throughout contract negotiations and the roll out of the IMPACT system, Rhee continued to target career teachers, in action and words. In the spring and summer of 2009 the district hired more than 900 new teachers—three times the usual number of summer hires. Then, in October, Rhee announced that a newly discovered budget shortfall required that 266 teachers be laid off. Because the layoffs were budget related, principals were free to ignore the “last hired-first fired” rules in the union contract. According to the union, a substantial number of the laid-off teachers were older, more senior teachers, rather than those who had been hired the previous spring and summer. Students and parents protested as beloved teachers and counselors were yanked out of buildings.

The layoffs created a firestorm of protest as classes were disrupted just weeks into the school year. The crisis got hotter when Rhee’s budget shortfall could not be verified and to some appeared contrived. But the final straw for many teachers was when the chancellor, in an interview with *Fast Company* magazine, justified the layoffs by saying, “I got rid of teachers who had hit children, who had had sex with children, who had missed 78 days of school.” Rhee was excoriated for the remark, which proved to be a gross overstatement, but the ousted teachers remained on the curb.

It was just one more in a series of what veteran teachers saw not only as personal attacks, but also as an indication that Rhee had no understanding of the challenges that they and their students face each day.

“It creates a very individualized and isolating feeling in the school,” says Sylvia, whose school population includes almost 100 homeless teens. “Our kids come in with a host of real problems. . . Teachers in the community need to be part of the process, not the object of it. . . Feeling under attack all the time isn’t conducive to collaboration.”

Chris Bergfalk, a teacher at H.D. Cooke Elementary School, is convinced that the attacks on teachers spill over into the consciousness of parents as well. “You can feel it,” he says. “Parents come into the classroom thinking that teachers are the enemy. . . It takes more than one meeting, sometimes, before the parents decide that you’re OK and basically competent. . . I’ve never felt this level of suspicion and mistrust from my students’ parents.”

Crystal Sylvia, Kerry’s sister and a social worker at a struggling but improving elementary school, has a different way of putting it. “We get the message: If we were here, working in the schools before the chancellor arrived, we are part of the problem.”

In a fall 2009 survey of teachers conducted by DC VOICE, an education advocacy group, 80 percent of teachers, when asked whether they liked the way the school system was run, said “no.” Many of those said their chief complaint was the lack of respect and the blame cast upon teachers. It is difficult to imagine any CEO who has so severely alienated her own workforce being dubbed a “remarkable visionary” in the national press.

But Rhee wasn't done. On July 23, 2010, she announced 165 additional teacher firings. Of those, 76 were dismissed as a result of poor evaluations under IMPACT. And, as feared, some of the fired teachers were among the most experienced, dynamic, and beloved educators in the system. Rhee boasted that more than 700 *additional* teachers had been judged "minimally effective" through IMPACT, and that a significant number of *them* would no doubt be fired after the next school year. The union's working group had not even met.

Even before the most recent dismissals, Rhee's transformation of the D.C. teacher workforce has been significant. Almost 40 percent of the teachers now working in DCPS entered the workforce since the chancellor arrived. In the recently completed school year, 120 of those teachers were placed through Teach for America—virtually guaranteeing continued high teacher turnover in district classrooms.

### **The Living Room Approach to Community Engagement**

Chancellor Rhee's approach to parents and communities has been nearly as tone deaf as her dealings with teachers. "She creates lots of opportunities for people to learn what's going on," reflects Jill Weiler, a DCPS parent and community organizer. "I think she really does listen. But it doesn't seem to influence her." For example, in December 2007, Rhee announced the closing or consolidation of two dozen schools. Parents, teachers, and students were frustrated at Rhee's failure to *inform*, much less involve the impacted communities before the announcement. As required by district rules, Rhee subsequently held a series of community hearings at the affected schools, but made few changes to the plan.

Then, in April 2008, Rhee announced that as many as 10 high schools would undergo federally mandated "restructuring," and that several would be placed under external management. Rhee promised school communities a voice in selecting from among six "partner" organizations she had chosen. But at Anacostia High School, the parents' choice of outside partner was rejected. Instead, Rhee chose Friendship Public Charter School—a charter management organization with five D.C. charter schools—to take over operations at Anacostia. Marvin Tucker, a DCPS parent and assistant football coach at Anacostia, was frustrated by the process: "DCPS doesn't want parent participation. Neither does Friendship." The new management group fired 85 percent of Anacostia's teachers and disbanded the school's Local School Restructuring Team (LSRT)—a DCPS advisory council of teachers and parents at each school.

Rhee isn't deaf to all voices. Her inconsistency exploded into the media in December 2009 when she announced the replacement of the principal at Hardy Middle School—one of the top performing schools in the city, and also one of the most racially mixed. Hardy's art-centered curriculum draws students from across the city to fill seats not taken by students from the surrounding affluent Georgetown community. When a \$48 million renovation at the school was completed in 2009, it became at least a more physically attractive option for neighborhood parents. But apparently there was still concern. After the chancellor abruptly announced that she was removing the popular (and by all measures, successful) principal, it was revealed that she had met in a private living room with a dozen Georgetown parents. The group had complained that they didn't feel "welcome" at Hardy.

The announcement set off a firestorm at Hardy, where teachers and parents—even the school’s LSRT—had not been consulted or informed of the chancellor’s decision. At a subsequent community meeting at the school, emotions were raw. The racial implications of the move were unavoidable, as Rhee tried to explain why she had met privately with a small group of white parents but failed to discuss the move with the school’s mostly African American parent leadership. Jeffrey Watson, a parent of two Hardy students, charged that Georgetown neighborhood parents stayed away because they were not comfortable with the racial composition of the school, reported the *Washington Post*. “Don’t play games with people in here. We’re not stupid,” Watson said at the school hearing. “Rather than having private meetings with them, tell them to walk on over.” Despite impassioned pleas from teachers, parents, and students to reinstate the principal, Rhee refused to budge.

Her decisions at Hardy and elsewhere are clear nods to the District’s changing demographics. Since 2000—with the proliferation of luxury condominiums and the boom in the housing market—the District has gained 16,000 residents. The city’s white population has increased from 30 percent to 40 percent of the total, and the African American population has decreased from 60 percent to 54 percent. Per capita income (adjusted for inflation) has increased from \$28,659 to more than \$41,000.

The effort to bring middle-class whites back to the city’s public schools may be a laudable one, Rhee’s process notwithstanding. But for the district’s high-profile reform efforts, there is another advantage, whether the chancellor intends it or not.

### **D.C.’s Education Miracle a Chimera?**

Despite glowing reports from the adoring media, D.C.’s education miracle is a chimera at best. There have been dramatic drops in standardized assessment scores, and, on closer analysis, the highly touted increases in D.C. National Assessment of Educational Progress (NAEP) scores are a reflection of the changing demographics of the schools, not the result of any real improvement in the quality of education provided to D.C.’s poorest and neediest students.

Bergfalk has taught in the district for seven years, and was a finalist for D.C. Teacher of the Year in 2010. As a teacher, he is focused and energetic. He is also deeply skeptical. In March 2009, the district announced that the new NAEP scores showed dramatic student increases and progress in closing D.C.’s persistent achievement gap. Bergfalk decided to check it out for himself. Using NAEP’s own interactive website, Bergfalk deconstructed the data.

“These test scores are not the result of an increase in student achievement. Instead, they are a result of a change in who was tested,” says Bergfalk. He found that for the 4th-grade test, the percentage of African American kids in DCPS (the lowest scoring racial/ethnic group in D.C.) taking the test dropped from 67 percent of test takers to 53 percent of test takers between 2007 and 2009, while the percentage of Hispanic students (with average test scores 12 points higher) rose from 6 percent to 9 percent of test takers, and white students rose from 6 percent to 7 percent of test takers. Where aggregate scores appear to show improvement among DCPS students, the disaggregated data tell a different story. The district continues to have one of the highest achievement gaps among major U.S. cities.

Bergfalk found the same pattern on the 8th-grade NAEP reading test. The percentage of African American kids in DCPS taking the test dropped from 59 percent of test takers to 43 percent of test takers, which is why there was a statistically significant four-point increase overall from 2007 to 2009, but no statistically significant increase for any racial/ethnic subgroup. The overall increase, like that on the 4th-grade test, was again the result of a change in demographics rather than an increase in student achievement.

When DCPS released the results of local assessments in July 2010, the district touted what it called “unparalleled progress” in secondary school results. But at the elementary level, scores took a hit—in some schools dropping by more than 30 percent the past two years. Students in half of all D.C. public schools performed worse in the 2010 assessments than they did in 2009.

### **The Price of Autocratic Reform**

In a Feb. 1, 2010, article, the *Washington Post* reported that approval ratings for Mayor Fenty and his schools chief had dropped precipitously. The poll showed Chancellor Rhee’s approval rating had sunk from 59 percent of residents in January 2008 to 43 percent in early 2010.

The numbers are crucial for Fenty: The mayor is up for reelection this fall, and the race is being cast as hinging on public support for his school reform agenda. Fenty’s challenger, Vincent Gray, the current chair of the city council, has been a critic of Rhee’s leadership: “We need a mayor who understands that the best way to achieve real and lasting school reform is to involve the community. The best way to help every community in the district is to engage teachers, engage parents, engage principals, and engage students in the decision-making.”

Mary Filardo, director of the 21st Century School Fund, agrees. “School change should be about students, families, and communities taking ownership of their schools. “Although there is the *illusion* that parents may have more access—that Michelle Rhee will answer their emails—there is meager civic life around the public schools.”

Cathy Reilly, who leads the Senior High School Alliance of Parents, Principals, and Educators, notes: “It’s not an empowering model. . . . The players in the system—parents, teachers, and principals—are supposed to understand that things are being ‘fixed’ and to get with the program, or get out.”

For many parents and teachers, the problem with Rhee’s approach was best summed up by Diane Ravitch, former undersecretary at the Department of Education under President George H.W. Bush. Ravitch, speaking at a reception in D.C. last spring, was asked what she thought of D.C. school reform. Ravitch responded with the timeless adage, “It’s difficult to win a war when you’re firing on your own troops.”

# Michelle Rhee on D.C. Kids' 'Crappy Education'

Firebrand Schools Chancellor Michelle Rhee, the National Face for Education Reform, Could Lose Her Job



By Z. BYRON WOLF and LEE FERRAN

Sept. 16, 2010

"They are getting a crappy education," Rhee said while discussing the district's schoolchildren in an interview with ABC News. "I mean, you could try to sugar coat it all you want. Subpar, or whatever. But what it is in terms that everyone can understand -- they are getting a crappy education."

It could be comments like that, not to mention aggressive and controversial education policies, landed Rhee in the spotlight of a new documentary "Waiting for Superman," and could also cost her her job.

Rhee, who has become the national face of education reform, could end up jobless after D.C. voters ousted Mayor Adrian Fenty.

Under Rhee's three-year watch, more than 200 teachers have been fired, nearly 20 schools closed and pay has been tied to merit evaluations. But test scores have shot up for elementary and secondary school students, and teachers' salaries were raised.

"The situation we inherited three years ago in Washington, D.C., was absolutely deplorable," Rhee said. "People need to understand that and if that makes people uncomfortable, then so be it."

The victor in Tuesday's Democratic primary -- and therefore almost a sure winner come November in this overwhelmingly Democratic city -- is City Council Chairman Vincent Gray, a chief Rhee antagonist at oversight hearings.

Gray has not said he would fire Rhee, but he hasn't said he would keep her on either.

"I have said on many occasions that after this election is over, I'd like to sit down with Michelle Rhee and let us walk and talk through it, you know, how we might work together," Gray said on CNN Tuesday.

Rhee had campaigned for Fenty. The [Washington Teacher's Union](#) campaigned for Gray.

"This has been a significant change in direction and it's going to require me sitting down with Mayor Fenty, the chairman and other people to see what's in the best interests of our kids," Rhee said Wednesday in an interview with MSNBC.

### **Rhee Feels Guilty About Fenty Loss**

"I do feel sort of bad and guilty," she said. "This man, Adrian Fenty, is truly the best leader I've ever worked for. We need more leaders like him who are willing to stake everything to make sure our kids are getting a good education."

Obviously, D.C. voters disagree. And so do the leaders of local and national teachers unions.

An op-ed Wednesday morning by George Parker, president of the Washington Teacher's Union, and Randi Weingarten, president of the American Federation of Teachers, made no mention of Rhee. The article was titled "No Turning Back for D.C. Kids." and it suggested that the teachers would be happier and work more collaboratively with Gray.

"Public education is a marathon, not a sprint. Yes, there's urgency to fixing our schools, but we have to set ourselves on a long-term path toward constant and sustainable progress," wrote the union leaders.

President Obama stayed out of the race, but Secretary of Education Arne Duncan appeared at an event with Fenty and Rhee in the closing days of the election. It was not a campaign event, but Duncan announced the award of \$75 million in new federal funding for D.C. schools. He was noticeably absent from any event with Gray.

Wednesday, Nov. 26, 2008

## **Rhee Tackles Classroom Challenge**

By Amanda Ripley / Washington

In 11th grade, Allante Rhodes spent 50 minutes a day in a Microsoft Word class at Anacostia Senior High School in Washington. He was determined to go to college, and he figured that knowing Word was a prerequisite. But on a good day, only six of the school's 14 computers worked. He never knew which ones until he sat down and searched for a flicker of life on the screen. "It was like Russian roulette," says Rhodes, a tall young man with an older man's steady gaze. If he picked the wrong computer, the teacher would give him a handout. He would spend the rest of the period learning to use Microsoft Word with a pencil and paper.

One day last fall, tired of this absurdity, Rhodes e-mailed Michelle Rhee, the new, bold-talking chancellor running the District of Columbia Public Schools system. His teacher had given him the address, which was on the chancellor's home page. He was nervous when he hit SEND, but the words were reasonable. "Computers are slowly becoming something that we use every day," he wrote. "And learning how to use them is a major factor in our lives. So I'm just bringing this to your attention." He didn't expect to hear back. Rhee answered the same day. It was the beginning of an unusual relationship.

The U.S. spends more per pupil on elementary and high school education than most developed nations. Yet it is behind most of them in the math and science abilities of its children. Young Americans today are less likely than their parents were to finish high school. This is an issue that is warping the nation's economy and security, and the causes are not as mysterious as they seem. The biggest problem with U.S. public schools is ineffective teaching, according to decades of research. And Washington, which spends more money per pupil than the vast majority of large districts, is the problem writ extreme, a laboratory that failure made. ([See pictures of a diverse group of American teens.](#))

Rhee took over Anacostia High and the district's 143 other schools in June 2007, when Mayor Adrian Fenty named her chancellor. Her appointment stunned the city. Rhee, then 37, had no experience running a school, let alone a district with 46,000 students that ranks last in math among 11 urban school systems. When Fenty called her, she was running a nonprofit called the New Teacher Project, which helps schools recruit good teachers. Most problematic of all, Rhee is not from Washington. She is from Ohio, and she is Korean American in a majority-African-American city. "I was," she says now, "the worst pick on the face of the earth."

But Rhee came highly recommended by another prominent school reformer: Joel Klein, chancellor of New York City's schools. And Rhee was once a teacher--in a Baltimore elementary school with Teach for America--and the experience convinced her that good teachers could alter the lives of kids like Rhodes.

Anacostia High has a 24% graduation rate, and only 21% of its students read at grade level. Rhodes is well aware of the miserable statistics, and when he first saw his new chancellor from afar, he thought she looked petite, foreign and underqualified. "I was like, She doesn't look ready for urban kids." But after they exchanged e-mails, he agreed to meet her downtown. He realized almost at once that he had underestimated her. "She actually sat

with me," he says, "and talked eye to eye, like I was one of her co-workers." They decided to meet again, this time at Anacostia High. Rhodes began to talk about Rhee to his classmates, and they started writing an agenda for the meeting, detailing all the things that were wrong with the D.C. school system. They had much to tell.

Rhee has promised to make Washington the highest-performing urban school district in the nation, a prospect that, if realized, could transform the way schools across the country are run. She is attempting to do this through a relentless focus on finding--and rewarding--strong teachers, purging incompetent ones and weakening the tenure system that keeps bad teachers in the classroom. This fall, Rhee was asked to meet with both presidential campaigns to discuss school reform. In the last debate, each candidate tried to claim her as his own, with Barack Obama calling her a "wonderful new superintendent."

Hard as it is to imagine Washington schools ranking among the best in the country, the city does have some things working in its favor. The system is relatively small, making it easier to redirect. As in New York City, the board of education was recently dissolved, which means changes can be made without waiting for the blessing of a fractious body of overseers. And now that a third of Washington's kids are in charter schools, there is intense pressure on the public system to keep the students it still has. If they keep fleeing the system at the current rate, enrollment will drop 50% every 10 years.

Each week, Rhee gets e-mails from superintendents in other cities. They understand that if she succeeds, Rhee could do something no one has done before: she could prove that low-income urban kids can catch up with kids in the suburbs. The radicalism of this idea cannot be overstated. Now, without proof that cities can revolutionize their worst schools, there is always a fine excuse. Superintendents, parents and teachers in urban school districts lament systemic problems they cannot control: poverty, hunger, violence and negligent parents. They bicker over small improvements such as class size and curriculum, like diplomats touring a refugee camp and talking about the need for nicer curtains. To the extent they intervene at all, politicians respond by either throwing more money at the problem (if they're on the left) or making it easier for some parents to send their kids to private schools (if they're on the right).

Meanwhile, millions of students left behind in confused classrooms spend another day learning nothing.

[See pictures of eighth-graders being recruited for college basketball.](#)

See TIME's special report on paying for college.

### A Teacher from Toledo

ONE DAY IN AUGUST, I SPENT THE MORNING with Rhee as she made surprise visits to Washington public schools. She emerged from her chauffeured black SUV with two BlackBerrys and a cell phone and began walking--fast--toward the front door of the first school. She wore a black pencil skirt, a delicate cream blouse and strappy high heels. When we got inside, she walked into the first classroom she could find and stood to the side, frowning like a specter. When a teacher stopped lecturing to greet her, she motioned for the teacher to continue. Rhee smiled only when students smiled at her first. Within two minutes, she had seen enough, and she stalked out to the next classroom.

In the hallway, she muttered about teachers who spend too much time cutting out elaborate bulletin-board decorations or chitchatting at "morning meetings" with their third-graders before the real work begins. "We're in Washington, D.C., in the nation's capital," she said later. "And yet the children of this city receive an education that every single citizen in this country should be embarrassed by." (See pictures of teens and how they would vote.)

In the year and a half she's been on the job, Rhee has made more changes than most school leaders--even reform-minded ones--make in five years. She has shut 21 schools--15% of the city's total--and fired more than 100 workers from the district's famously bloated 900-person central bureaucracy. She has dismissed 270 teachers. And last spring she removed 36 principals, including the head of the elementary school her two daughters attend in an affluent northwest-D.C. neighborhood.

Rhee is convinced that the answer to the U.S.'s education catastrophe is talent, in the form of outstanding teachers and principals. She wants to make Washington teachers the highest paid in the country, and in exchange she wants to get rid of the weakest teachers. Where she and the teachers' union disagree most is on her ability to measure the quality of teachers. Like about half the states, Washington is now tracking whether students' test scores improve over time under a given teacher. Rhee wants to use that data to decide who gets paid more--and, in combination with classroom evaluation, who keeps the job. But many teachers do not trust her to do this fairly, and the union bristles at the idea of giving up tenure, the exceptional job security that teachers enjoy.

Rhee grew up in a nice neighborhood in Toledo, Ohio, a middle child, between two brothers. Her parents immigrated from South Korea several years before she was born so that her father could study medicine at the University of Michigan. He became a specialist in rehabilitation and pain medicine, and her mother owned a women's clothing store. Education was highly valued in the family, as was independence. After Rhee finished sixth grade, her parents sent her to South Korea to live with an aunt and attend a Korean school, a harrowing experience for a child in a strange land with limited skills in its language. When she returned a year later, her parents sent her to a private school because they found the public schools lacking.

After Rhee graduated from Cornell University in 1992, she joined Teach for America. She spent three years teaching at Harlem Park Elementary, one of the lowest-performing schools in Baltimore. Her parents visited and were stunned by the conditions of the neighborhood. "The area where the kids lived reminded me of a scene after the Korean War," says her father Shang Rhee.

Rhee suffered during that first year, and so did her students. She could not control the class. Her father remembers her returning home to visit and telling him she didn't want to go back. She had hives on her face from the stress.

The second year, Rhee got better. She and another teacher started out with second-graders who were scoring in the bottom percentile on standardized tests. They held on to those kids for two years, and by the end of third grade, the majority were at or above grade level, she says. (Baltimore does not have good test data going back that far, a problem that plagues many districts, so this assertion cannot be checked. But Rhee's principal at the time has confirmed the claim.) The experience gave Rhee faith in the power of good teaching. Yet what happened afterward broke her heart. "What was most disappointing was to watch these kids go off into the fourth grade and just lose everything," Rhee says, "because they were in classrooms with teachers who weren't engaging them."

The summer after her second year of teaching, Rhee met Kevin Huffman, a fellow Teach for America member. They married two years later and had two daughters, Starr and Olivia, now 9 and 6. They moved to Colorado to be closer to Rhee's parents, but the marriage faltered. Huffman and Rhee separated, agreeing to joint custody of the kids. And then Rhee got the offer to run Washington's schools. Huffman, now head of public affairs for Teach for America, had no illusions about the challenges Rhee would face. But when he heard about

the job offer, he decided to follow her to D.C. "Even though moving didn't sound like a whole lot of fun," he says, "the reality is that I genuinely believed that she had the potential to be the best superintendent in the country. Most people think about their own longevity, about political considerations." He adds, "Very few people genuinely don't care about anything other than the end result for kids. Michelle will compromise with no one when it comes to making sure kids get what they deserve."

### Scorched Earth

WHEN THEY ARRIVED IN WASHINGTON, Huffman and Rhee anted up. They enrolled Starr and Olivia in Oyster-Adams, a public elementary school. Although the school is considered among the best in the city, Rhee quickly concluded that it was inferior to the Colorado public school her daughters had been attending. Among other things, the homework was sporadic and unchallenging, she says. Rhee dismissed the principal before the school year was out, a move that sparked outrage across the city and in her own home. "That," she says, "was probably the decision I got the most grief about."

Rhee is, as a rule, far nicer to students than to most adults. In many private encounters with officials, bureaucrats and even fundraisers--who have committed millions of dollars to help her reform the schools--she doesn't smile or nod or do any of the things most people do to put others at ease. She reads her BlackBerry when people talk to her. I have seen her walk out of small meetings held for her benefit without a word of explanation. She says things most superintendents would not. "The thing that kills me about education is that it's so touchy-feely," she tells me one afternoon in her office. Then she raises her chin and does what I come to recognize as her standard imitation of people she doesn't respect. Sometimes she uses this voice to imitate teachers; other times, politicians or parents. Never students. "People say, 'Well, you know, test scores don't take into account creativity and the love of learning,'" she says with a drippy, grating voice, lowering her eyelids halfway. Then she snaps back to herself. "I'm like, 'You know what? I don't give a crap.' Don't get me wrong. Creativity is good and whatever. But if the children don't know how to read, I don't care how creative you are. You're not doing your job."

[See pictures of a diverse group of American teens.](#)

[See pictures of the college dorm's evolution.](#)

Rhee's ferocity has alienated many people--even those who support her ideas and could be helpful to her. This summer the chair of the Washington city council called dealing with Rhee a "nightmare." There has been talk of passing legislation to rein her in. "Michelle Rhee believes in scorched earth," says Randi Weingarten, president of the American Federation of Teachers, a national union that has become unusually involved in local matters in Washington. "I am not saying that D.C.'s school system doesn't need a lot of help. But I have been part of a lot of reforms, and the one thing I have never seen work is a hierarchical, top-down model."

Rhee is aware of the criticism, but she suggests that a certain ruthlessness is required. "Have I rubbed some people the wrong way? Definitely. If I changed my style, I might make people a little more comfortable," she says. "But I think there's real danger in acting in a way that makes adults feel better. Because where does that stop?"

#### The Data

ON RHEE'S TOUR OF SCHOOLS DURING the first week of classes this year, a parent stopped her to praise her accomplishments so far. Rhee listened with a small smile while systematically cracking each of her knuckles with the thumb of the same hand. Then she got back into her SUV and began furiously e-mailing. When she calls her staff, she does not say hello; she just starts talking. She answered 95,000 e-mails last year, according to her office.

She frequently sounds exasperated. "People come to me all the time and say, 'Why did you fire this person?'" she says. The whiny voice is back. "'She's a good person. She's a nice person.' I'm like, 'O.K., go tell her to work at the post office.' Just because you're a nice person and you mean well does not mean you have a right to a job in this district."

The data back up Rhee's obsession with teaching. If two average 8-year-olds are assigned to different teachers, one who is strong and one who is weak, the children's lives can diverge in just a few years, according to research pioneered by Eric Hanushek at Stanford. The child with the effective teacher, the kind who ranks among the top 15% of all teachers, will be scoring well above grade level on standardized tests by the time she is 11. The other child will be a year and a half below grade level--and by then it will take a teacher who works with the child after school and on weekends to undo the compounded damage. In other words, the child will probably never catch up.

The ability to improve test scores is clearly not the only sign of a good teacher. But it is a relatively objective measure in an industry with precious few. And in schools where kids are struggling to read and subtract, it is a prerequisite for getting anything else done. In their defense, Washington teachers and principals, like educators in many of the country's worst school districts, talk about trying to teach a seventh-grader who is eight months pregnant; about being assaulted by students; about holding meetings for parents, replete with free food, and no one showing up. Washington Teachers' Union leader George Parker worries that test-score data cannot take all this into account: "I don't think our teachers are afraid of demonstrating student growth, but you have to look at the dynamics of the children you're dealing with. If I'm teaching children who have computers at home, who have educated parents, those students can move a lot faster than kids whose parents can't read."

Rhee says she does not expect all kids to move up the charts at the same rate; the important thing is to demand that most do move up. "This is a cultural shift," says Kaya Henderson, Rhee's deputy. "For years, there were no data, and you were a good teacher because the parents or your principal told you so. And so this is a scary thing."

The most glaring example of the backward logic of schools is the way most teachers receive lifetime job security after one or two years of work. As Larry Rosenstock, CEO of eight California charter schools, noted at an education panel last spring, we don't give that kind of job security to pilots or doctors--or any others who hold our children's fate in their hands: "What is it that is so exceptional about teachers that they should have this unique right?"

Teachers got tenure rights in the early 20th century to protect them against meddling politicians and school-board members who treated their jobs as patronage pawns. But the rationale is plainly antiquated. Today dozens of federal and state laws protect teachers (and other people) from arbitrary firing. But most teachers still receive tenure almost automatically. In fact, even before they get tenure, they are rarely let go. Schools spend millions of dollars evaluating teachers, but principals have little incentive to shake up their staffs, and so most teachers end up scoring near the top. "What I'm finding is that our principals are ridiculously--like ridiculously--conflict-averse," Rhee says. "They know someone is not so good, and they want to give him a 'Meets expectations' anyway because they don't want to deal with the person coming into the office and yelling and getting the parents riled up."

Right now, schools assess teachers before they teach--filtering for candidates who are certified, who have a master's degree, who have other pieces of paper that do not predict good teaching. And we pay them the same regardless of their effectiveness.

By comparison, if we wanted to have truly great teachers in our schools, we would assess them after their second year of teaching, when we could identify very strong and very weak performers, according to years of research. Great teachers are in total control. They have clear expectations and rules, and they are consistent with rewards and punishments. Most of all, they are in a hurry. They never feel that there is enough time in the day. They quiz kids on their multiplication tables while they walk to lunch. And they don't give up on their worst students, even when any normal person would.

See pictures of teens and how they would vote.

See pictures of college mascots.

Students know this instinctively. Acquirra Carter, 14, attends Washington's Cardozo High School, where, she complains, kids walk out of classes when they get bored and certain teachers talk on their cell phones when they are supposed to be teaching. But there are exceptions, and Carter knows them when she sees them. "Some teachers find a way. Mrs. Brown, they would not dare walk out of her class. She has total control. Mrs. Lawton, nobody leaves her class. This boy whispered, and she knew it!"

Minefields in the Schoolyard

IN THE VIEW OF RHEE AND REFORMERS like her, the struggle to fix America's failing school system comes down to a simple question: How do you get the best teachers and principals to work in the worst schools? In her quest to figure this out, Rhee has already suffered a major setback. Earlier this year, she proposed a revolutionary new model to let teachers choose between two pay scales. They could make up to \$130,000 in merit pay on the basis of their effectiveness--in exchange for giving up tenure for one year. Or they could keep tenure and accept a smaller raise. (Currently, the average teacher's salary in Washington is \$65,902.) The proposal divided the city's teachers into raging, blogging factions. This fall, the union declined to put Rhee's proposal to a vote, and its relationship with her has become increasingly hostile.

In October, Rhee vowed to purge incompetent teachers through any means necessary. She has brought on extra staff to help principals navigate the byzantine termination process and says an unprecedented number of teachers have already been put on notice. But she cannot give teachers the huge raises she proposed unless the union agrees to a new contract. So this approach will be slower, more litigious and less inspiring. In other words, it will be all stick and no carrot. It's hard to say if anyone else would have been able to persuade the union to trade away tenure for cash bonuses, but Rhee's sometimes dismissive attitude made it harder for some teachers to trust her.

For now, Mayor Fenty says he still has full confidence in Rhee, and he claims that Washington residents share his enthusiasm. "Regular people love the fact that for once someone is making tough decisions for D.C. schools," says Fenty, who attended the district's public schools. But the disconnect between Rhee's confident, sweeping rhetoric and the tortured reality is sizable, and it is most apparent at ground level, in the schools she is trying to save.

Rhee likes to tell the story of how Rhodes got in touch with her. She recounted it on TV on The Charlie Rose Show in July: "A student sent me this e-mail and said, basically, If you really want to know what's wrong with our schools, you should come and talk to the kids because I'm afraid that by talking to the adults, you might not be getting the real story."

Rhodes has a more nuanced version of the story. After their initial meeting, they met for a second time at Anacostia High, in a room off the library. Rhodes had invited eight fellow students, and they gave Rhee their typed agenda. They talked about the need for better teachers, as Rhee emphasizes when she tells the story. But Rhodes says he also told her about the holes in the floors, the lack of supplies and the fact that most classes did not have enough books for the students to take home. Rhee listened but did not offer many specific solutions. "She was vague," Rhodes says. "I got the sense she didn't want to make promises she couldn't keep."

Then one day last May, Rhee dismissed Anacostia's principal. Rhodes was devastated. He sent Rhee a furious e-mail. "My principal is a mother, mentor and a teacher to us all," he wrote. "I refuse, NO! we refuse the students of Anacostia to let her go." Rhee wrote him back. "She told me not to worry about it," Rhodes says quietly.

One of the things that make school reform so wrenching and slow is that schools become embedded in people's hearts. This is true in rich neighborhoods and poor ones, with good

schools and bad. Rhodes talks about his school as if it were an extension of himself. He talks about "my teachers" and "my staff," and he refers to other students as "my colleagues." "I love Anacostia High School," he says. At the same time, he is dismayed by his school. He walks through his halls, pointing out the litter on the floor and the broken lockers. Rhodes is 6 ft. 8 in. (2 m) tall, so he has to look down to talk to almost everyone. He wears white tube socks under his black Nike flip-flops and carries his large frame deliberately, like a gentle overseer. "You see all these lockers? None of them work," he says. "This classroom over here is supposed to be for home economics, but it's never been fixed up."

Rhodes did not contact Rhee again. This year Anacostia has a new principal, and Rhodes admits that the school is functioning better. "All the children are wearing their uniforms," he says. "No kids are in the hallways." If you come to school without your uniform on, a security guard or an assistant principal will "snatch you up and just send you home." All the computers in his Microsoft Word classroom now work.

But on Nov. 19, Rhodes had to evacuate his school when fights broke out in the hallways and three students were stabbed. And he still doesn't use the school bathrooms, which are filthy and sometimes unsafe. He waits until he returns to his grandmother's house, where he lives.

Now that he is a senior, Rhodes spends much of his time worrying about getting into college. As we stand on the front steps of the school one autumn evening after class, I ask him what he wants to study. He answers quickly: "Public administration, with a minor in English." I ask him how he can be so sure. "Because someone told me that's what I have to do to take Chancellor Rhee's job," he says matter-of-factly, watching his drum corps practice and his baton twirlers twirl in the twilight.

**SHELDON JACKSON COLLEGE, Appellant, v. STATE of Alaska, Avrum Gross, Attorney General for the State of Alaska, B. B. Allen, Commissioner of Administration for the State of Alaska, Kerry Romesburg, Executive Director, Post-Secondary Education Commission, Marshall L. Lind, Commissioner of Education for the State of Alaska, Appellees; INUPIAT UNIVERSITY OF the ARCTIC, Appellant, v. STATE of Alaska, Avrum Gross, Attorney General for the State of Alaska, B. B. Allen, Commissioner of Administration for the State of Alaska, Kerry Romesburg, Executive Director, Post-Secondary Education Commission, Marshall L. Lind, Commissioner of Education for the State of Alaska, Appellees**

**Supreme Court of Alaska  
599 P.2d 127;1979 Alas. LEXIS 552**

**Nos. 3978, 4002**

**August 28, 1979**

**Editorial Information: Prior History**

Appeal from the Superior Court of the State of Alaska, First Judicial District, Juneau, Thomas B. Stewart, Judge.

**Counsel** Monte L. Brice, Ely, Guess & Rudd, Juneau, for Appellant Sheldon Jackson College. B. Richard Edwards, Mark S. Bledsoe, Law Offices of B. Richard Edwards, Anchorage, for Appellant Inupiat University of the Arctic. Ronald W. Lorensen, Assistant Attorney General, Avrum M. Gross, Attorney General, Juneau, for Appellee.

Robert C. Erwin, Sanford M. Gibbs, Hagans, Smith, Brown, Erwin & Gibbs, Anchorage, for Amicus Curiae Catholic Bishop of Northern Alaska.

**Judges:** Rabinowitz, Chief Justice, Connor, Boochever, Burke and Matthews, Justices.

**CASE SUMMARY**

**PROCEDURAL POSTURE:** Appellant private universities challenged a decision of the Superior Court of the State of Alaska, First Judicial District, Juneau, which granted summary judgment in favor of appellee, the State of Alaska, and held that Alaska's tuition grant program, Alaska Stat. 14.40.751-.806, violated Alaska Const. art. VII, 1. The private universities had filed an action challenging the termination of the program. Tuition grant program that awarded students at private colleges difference between tuition at private and public colleges violated Alaska Constitution, which prohibited payment of public funds for direct benefit of a private educational institution.

**OVERVIEW:** The grant program awarded Alaska residents attending private colleges in Alaska an amount generally equal to the difference between the tuition charged by the student's private college and that charged by a public college in the same area, not to exceed \$ 2,500 annually. The attorney general found that the grants violated Alaska Const. art. VII, 1, which prohibited the payment of money from public funds for the direct benefit of any religious or other private educational institution. The trial court granted summary judgment for the State. On appeal, the court affirmed, holding that the grant program clearly violated 1 because (1) the class primarily benefitted by the tuition grant program consisted only of private colleges and their students; (2) the public funds expended under Alaska Stat. 14.40.776 constituted nothing less than a subsidy of the education received by the student at his private college and thus implicated fully the core concern of the direct benefit provision; (3) the magnitude of benefits bestowed under the program was substantial; and (4) the students to whom benefits were paid were merely conduits for the transmission of state funds to private colleges.

**OUTCOME:** The summary judgment in favor of the State was affirmed.

LexisNexis Headnotes

*Constitutional Law* >

Opinion

{599 P.2d 128} The final sentence of article VII, section 1 of our state constitution prohibits the payment of money from public funds "for the direct benefit of any religious or other private educational institution." 1 The question in this case is whether Alaska's tuition grant program, AS 14.40.751-.806, violates this provision.

The tuition grant program awards Alaska residents attending private colleges in Alaska an amount generally equal to the difference between the tuition charged by the student's private college and the tuition charged by a public college in the same area, not to exceed \$2,500.00 annually. The student is required to apply the entire amount of the grant towards his or her tuition. AS 14.40.776 (a).

In May of 1976 the attorney general issued an opinion declaring tuition grants to be invalid as a direct benefit to private schools in violation of article VII, section 1. The Department of Administration then stopped paying tuition grants. Appellant Sheldon Jackson College, a private educational institution, filed suit to enjoin the department's termination order, but agreed to dismiss the suit without prejudice when a proposition to amend article VII, section 1, to permit tuition grants was placed on the ballot to be voted on in the general election of November, 1976. 2

The ballot proposition was rejected by the voters 64,211 to 54,636. Sheldon Jackson then renewed its lawsuit and another private university, Inupiat University of the Arctic, filed a complaint in intervention. The superior court concluded that the tuition grant program provides direct benefits to private educational institutions and thus violates article VII, section 1. Summary judgment was thereupon granted in favor of the state. We affirm.

{599 P.2d 129} I

The minutes of the Alaska Constitutional Convention show that an unsuccessful motion was made to delete entirely the direct benefit prohibition of article VII, section 1. 3 The proponent of the motion argued that the state constitutional provisions prohibiting the establishment of religion 4 and prohibiting spending public funds for private purposes, 5 were sufficient to accomplish the objectives of the direct benefit clause. By rejecting this proposal the convention made it clear that it wished the constitution to support and protect a strong system of public schools. 6 Other authorities have also suggested that a constitutional provision barring aid to all private schools serves to enforce the separation of church and state without requiring executive or judicial inquiry into the sectarian affiliation of particular schools, 7 and furthermore disengages the state from the undesirable task of withholding benefits solely on the basis of religious affiliation. 8

At the same time, in expressly rejecting alternative language that would have prohibited "direct or indirect benefits," 9 the delegates to Alaska's Constitutional Convention made it abundantly clear that they did not wish to prevent the state from providing for the health and welfare of private school students, 10 or from focusing on the special needs of individual residents. 11 Article VII,

section 1 was thus designed to commit Alaska to the pursuit of public, not private education, without requiring absolute governmental indifference to any student choosing to be educated outside the public school system.

The Alaska Constitution is apparently unique in its express ban only on "direct" benefits. However, in construing state constitutional provisions that prohibit "support" for private schools, 12 or state and federal proscriptions against the establishment of religion, 13 the courts have frequently resorted to a distinction between "direct" and "incidental" benefits. 14 Though the distinction may at times appear more "metaphysical" {599 P.2d 130} than precise, 15 the analyses found in these decisions are helpful in determining generally the type of government action intended to be prohibited by article VII's direct benefit clause. The following generalizations can be drawn from these authorities.

First, constitutional provisions governing aid to private schools have generally been perceived as requiring neutrality rather than hostility from the state; 16 thus the breadth of the class to which statutory benefits are directed is a critical area of judicial scrutiny. 17 For example, though the police and fire protection afforded a private school may provide the school with quite direct benefits, as when a campus fire is extinguished, such benefits are provided without regard to status and affiliation, and have universally been presumed to be constitutional. 18 Conversely, a benefit flowing only to private institutions, or to those served by them, does not reflect the same neutrality and non-selectivity. 19

A second central criterion in determining the constitutionality of a state aid program, is the nature of the use to which the public funds are to be put. As is apparent from the convention debate, the core of the concern expressed in the direct benefit prohibition involves government aid to *Education* conducted outside the public schools. Though any state assistance that relieves the burden on a private school to provide for the health and welfare of its students will free the school to concentrate its funds on its private educational mission, numerous delegates voiced their understanding that the direct benefit clause would not bar such incidental support. 20 An analogous distinction has frequently been drawn in establishment clause cases, where the pertinent inquiry is whether a statute impacts "essentially secular educational functions" that are separable from the school's religious instruction. 21

Third, in determining whether a school is directly benefitted by public funds, a court must consider, though not in isolation, the magnitude of the benefit conferred. A trivial, though direct, benefit may not rise to the level of a constitutional violation, whereas a substantial, though arguably indirect, benefit may. 22

Finally, while a direct transfer of funds from the state to a private school will of course render a program constitutionally suspect, 23 merely channeling the funds through an intermediary will not save an otherwise improper expenditure of public monies. The courts have expressly noted {599 P.2d 131} that the superficial form of a benefit will not suffice to define its substantive character. 24

II

The foregoing observations are readily applicable to the present case. First, the class primarily benefitted by the tuition grant program consists only of private colleges and their students. Though the appellants characterize the statute as merely equalizing the positions of private and public university students, effectively the chief beneficiaries are the private colleges themselves. Unlike a statute that provides comparable dollar subsidies to all students, 25 Alaska's tuition grant program is not neutral, inasmuch as the only incentive it creates is the incentive to enroll in

a private college. Subsidy programs suffering from similar deficiencies have been repeatedly struck down under a variety of state constitutional provisions, 26 as well as under the Federal Constitution. 27

Second, the public funds expended under AS 14.40.776 constitute nothing less than a subsidy of the education received by the student at his or her private college, and thus implicate fully the core concern of the direct benefit provision. While the program may be motivated, as was stated in the preface to the statute as it was originally passed, by the desire to "help retain qualified students in Alaska," 28 such a laudable purpose cannot escape article VII's mandate that Alaska pursue its educational objectives through public educational institutions.

Furthermore, the magnitude of benefits bestowed under the tuition grant program is quite substantial. For the last year in which the tuition grants were paid, 1975-76, Sheldon Jackson received approximately six hundred thousand dollars from the program. The grants were then \$1,850 for each eligible student, 29 and for the 1976-77 school year the grants were to be \$2,500. 30 According to Sheldon Jackson it has suffered {599 P.2d 132} "a substantially diminished capacity" to function as an educational institution as a result of the termination of the tuition grant program, as reflected in a reduction of students, faculty, income and curriculum offerings. Inupiat University claims a similar impairment of function.

Finally, though the tuition grants are nominally paid from the public treasury directly to the student, the student here is merely a conduit for the transmission of state funds to private colleges. Before the state will deliver a check to the student, the latter must certify under oath and under penalty of perjury that he or she will pay it over to the college. AS 14.40.786. Simply interposing an intermediary "does not have a cleansing effect and somehow cause the funds to lose their identity as public funds. While the ingenuity of man is apparently limitless, the court has held with unvarying regularity that one may not do by indirection what is forbidden directly." *Wolman v. Essex*, 342 F. Supp. 399, 415 (S.D. Ohio), *aff'd mem.*, 409 U.S. 808, 93 S. Ct. 61, 34 L. Ed. 2d 69 (1972).

Based on the foregoing we have no difficulty in concluding that the tuition grant program is in its effect a direct benefit to private educational institutions and therefore violates article VII, section 1 of our constitution. Though Sheldon Jackson points out that several courts have upheld tuition grant programs involving college students, 31 and that aid programs involving colleges have more readily been found constitutional than similar programs involving elementary and secondary schools, 32 the cited decisions rely on the *de minimis* degree of church control in the benefitted sectarian colleges. Such reasoning obviously has no application with respect to article VII's direct benefit prohibition, which bans aid to all private educational institutions, including those with no religious affiliation.

Sheldon Jackson also argues that the direct benefit clause was not meant to apply to colleges and universities, but only to primary and secondary private educational institutions. We see no basis for this contention. Both the plain language of the constitution and the minutes of the constitutional debate 33 indicate that all private educational institutions were meant to be included. The judgment is AFFIRMED.

## Footnotes

1 Art. VII, 1 of the Alaska Const. provides:

**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.

2 The proposition would have appended the following language to art. VII, 1: "however nothing in this section shall prevent direct aid to students in accordance with the law." 1976 House Joint Resolution 73 am S. In addition an explanation of the amendment appeared on the ballot as follows:

This is a proposal to amend Article VII, Section 1 of the Constitution of the State of Alaska to allow public funds to be used to provide direct aid such as scholarships and tuition equalization grants to students attending private educational institutions. The Attorney General of the State of Alaska has interpreted Article VII, Section 1 of the constitution as it now reads, to prohibit the state from giving tuition equalization grants to students attending private colleges or universities in the state.

3 Proceedings of the Alaska Constitutional Convention 1526-28 (hereafter cited as Proceedings).

4 Art. I, 4 provides in part: "No law shall be made respecting an establishment of religion . . . ."

5 Art. IX, 6 provides: "No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose."

6 For example, delegate Armstrong, speaking for the committee which drafted art. VII, 7, stated that it had sought to "provide and protect for the future of our public schools." 2 Proceedings at 1514. Delegate Coghill expressed the thought that the amount of tax dollars available for the support of public schools might be lessened if public funds were used to support a great many private schools. *Id.* at 1520. In *Spears v. Honda*, 51 Haw. 1, 449 P.2d 130, 135 (1968), the need to ensure that public schools would not be neglected is expressed as the reason underlying Hawaii's constitutional bar to public aid of private schools. Hawaii, however, apparently had an elite private school system, a system having no strong parallels in the Territory of Alaska.

7 See *Gaffney v. State Bd. of Educ.*, 192 Neb. 358, 220 N.W.2d 550, 553 (1974).

8 See *Everson v. Bd. of Educ.*, 330 U.S. 1, 16, 91 L. Ed. 711, 724, 67 S. Ct. 504 (1947); *Spears v. Honda*, 51 Haw. 1, 449 P.2d 130, 137 (1968).

9 Proceedings, *supra* note 3 at 1528.

10 *Id.* at 1513-16, 1519-20, 1521-22, 1524.

11 *Id.* at 1514.

12 *E.g.*, Mo. Const. art. IX, 8.

13 U.S. Const. amend. I provides in part: "Congress shall make no law respecting an establishment of religion . . . ."

14 See, e.g., *Wolman v. Walter*, 433 U.S. 229, 250, 254, 53 L. Ed. 2d 714, 733, 97 S. Ct. 2593 (1977); *Meek v. Pittenger*, 421 U.S. 349, 364-65, 44 L. Ed. 2d 217, 231, 95 S. Ct. 1753 (1975); *Comm. for Publ. Educ. v. Nyquist*, 413 U.S. 756, 783 n. 39, 37 L. Ed. 2d 948, 969 n. 39, 93 S. Ct. 2955 (1973); *Americans United v. Rogers*, 538 S.W.2d 711, 719 (Mo.), *cert. denied*, 429 U.S. 1029, 50 L. Ed. 2d 632, 97 S. Ct. 653 (1976). Though the Federal Constitution does not explicitly refer to the relationship between the government and religious schools, the Supreme Court's "direct benefit" standard has been formulated almost exclusively in the context of school aid cases, *supra*, and is thus valuable precedent in construing our own constitutional provision.

15 See L. Tribe, *American Constitutional Law* 840 (1978).

16 See *Roemer v. Bd. of Publ. Works of Md.*, 426 U.S. 736, 747, 49 L. Ed. 2d 179, 188, 96 S. Ct. 2337 (1976); *Lemon v. Kurtzman*, 403 U.S. 602, 614, 29 L. Ed. 2d 745, 756, 91 S. Ct. 2105 (1971); *Everson v. Bd. of Educ.*, 330 U.S. 1, 18, 91 L. Ed. 711, 724-25, 67 S. Ct. 504 (1947).

17 See, e.g., *Comm. for Publ. Educ. v. Nyquist*, 413 U.S. 756, 782 n. 38, 37 L. Ed. 2d 948, 968 n. 38, 93 S. Ct. 2955 (1973); *Springfield Schl. Dist. v. Dept. of Educ.*, 483 Pa. 539, 397 A.2d 1154, 1163 (1979).

18 See citations *supra* notes 16 and 17.

19 See *infra* notes 26 and 27.

20 See *supra* note 10. In *Matthews v. Quinton*, 362 P.2d 932 (Alaska 1961); *cert. denied*, 368 U.S. 517, 7 L. Ed. 2d 522, 82 S. Ct. 530 (1962), a statute enabling private school children living far from their schools to ride public school buses at public expense, was held violative of the direct benefit prohibition. We do not rely on *Matthews* in reaching today's decision, and thus have no occasion to overrule or re-affirm it. A substantial question, however, can be raised as to its continuing vitality in light of the analysis which we employ in the present opinion.

21 *Roemer v. Bd. of Publ. Works of Md.*, 426 U.S. 736, 762, 49 L. Ed. 2d 179, 197, 96 S. Ct. 2337 (1976). See *Meek v. Pittenger*, 421 U.S. 349, 366, 44 L. Ed. 2d 217, 232, 95 S. Ct. 1753 (1975).

22 Compare *Lendall v. Cook*, 432 F. Supp. 971 (E.D. Ark. 1977) (program involving eight scholarships upheld), with *Meek v. Pittenger* (striking down a state loan of nonideological instructional materials, in part on the basis of the substantiality of aid to the overall functioning of the benefitted schools).

23 *Id.*

24 *Wolman v. Walter*, 433 U.S. 229, 250, 53 L. Ed. 2d 714, 733-34, 97 S. Ct. 2593 (1977) (striking down a loan of instructional materials to students after similar loan to schools had been struck down in *Meek*); *Comm. for Publ. Educ. v. Nyquist*, 413 U.S. 756, 785-86, 37 L. Ed. 2d 948, 970, 93 S. Ct. 2955 (1973) (striking down reimbursements to parents for private school tuitions).

25 *Minn. Civ. Lib. U. v. Roemer*, 452 F. Supp. 1316, 1322 (D.Minn. 1978)(tax deduction for parents of all school children upheld); *Americans United for the Sep. of Ch. and State v. Blanton*, 433 F. Supp. 97 (M.D. Tenn.), *aff'd mem.*, 434 U.S. 803, 98 S. Ct. 39, 54 L. Ed. 2d 65 (1977)(public and private college students eligible for grants); *Durham v. McLeod*, 259 S.C. 409, 192 S.E.2d 202 (1972), *appeal dismissed for lack of a substantial federal question*, 413 U.S. 902, 93 S. Ct. 3060, 37 L. Ed. 2d 1020 (1973)(loans to all college students). *But see Miller v. Ayres*, 213 Va. 251, 191 S.E.2d 261 (1972) (conditional grants to public and private college students held unconstitutional); *Weiss v. Bruno*, 82 Wash. 2d 199, 509 P.2d 973 (1973) (grants to needy private school children not saved by summer school grants to needy public school children).

26 See *Klinger v. Howlett*, 56 Ill. 2d 1, 305 N.E.2d 129 (1973); *Opinion of the Justices*, 357 Mass. 846, 259 N.E.2d 564 (1970); *Opinion of the Justices*, 109 N.H. 578, 258 A.2d 343 (1969).

27 *Comm. for Publ. Educ. v. Nyquist*, 413 U.S. 756, 782 n. 38, 37 L. Ed. 2d 948, 968 n. 38, 93 S. Ct. 2955 (1973) (tuition reimbursement to parents of non-public school children); *Sloan v. Lemon*, 413 U.S. 825, 37 L. Ed. 2d 939, 93 S. Ct. 2982 (1973)(tuition reimbursement); *Wolman v. Essex*, 342 F. Supp. 399, 412 (S.D. Ohio), *aff'd mem.*, 409 U.S. 808, 93 S. Ct. 61, 34 L. Ed. 2d 69 (1972)("the reimbursement grant aspects . . . are directed only towards the parents of children who attend non-public schools"). See also *Meek v. Pittenger*, 421 U.S. 349, 44 L. Ed. 2d 217, 95 S. Ct. 1753 (1975)(auxiliary services only provided to non-public school students); *Publ. Funds for Publ. Schools of N.J. v. Marburger*, 358 F. Supp. 29 (D.N.J. 1973), *aff'd mem.*, 417 U.S. 961, 41 L. Ed. 2d 1134, 94 S. Ct. 3163 (1974) (private school students reimbursed for textbooks while public schoolers only loaned books); *Members of Jamestown Schl. Comm. v. Schmidt*, 427 F. Supp. 1338, 1348 (D.R.I.1977)(only private school students bused out of district); *Americans United for Sep. of Ch. and State v. Benton*, 413 F. Supp. 955 (D. Iowa 1976) (same).

28 Section 1 ch. 230 SLA 1970.

29 Section 2 ch. 136 SLA 1975.

30 AS 14.40.776(a)(2).

31 *Lendall v. Cook*, 432 F. Supp. 971 (E.D. Ark. 1977); *Americans United for Sep. of Ch. and State v. Bubb*, 379 F. Supp. 872 (D. Kan. 1974)(upheld with respect to most, but not all, church-related schools); *Americans United v. Rogers*, 538 S.W.2d 711 (Mo.), *cert. denied*, 429 U.S. 1029, 50 L. Ed. 2d 632, 97 S. Ct. 653 (1976).

32 See *Roemer v. Bd. of Publ. Works of Md.*, 426 U.S. 736, 49 L. Ed. 2d 179, 96 S. Ct. 2337 (1976)(non-categorical grants to colleges); *Hunt v. McNair*, 413 U.S. 734, 37 L. Ed. 2d 923, 93 S. Ct. 2868 (1973)(state leaseback arrangement with Baptist college); *Tilton v. Richardson*, 403 U.S. 672, 29 L. Ed. 2d 790, 91 S. Ct. 2091 (1971) (construction grants to colleges).

33 The convention delegates were informed by the chairperson of the authoring committee that the committee intended the phrase "other private educational institutions" to include "any educational institution that is not run by the state." 2 Proceedings, *supra* note 3 at 1511. See also *id.* at 1532.

# LEGAL SERVICES

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## MEMORANDUM

December 1, 2010

**SUBJECT:** Education Vouchers as Scholarships  
(Work Order No. 27-LS0223\A)

**TO:** Representative Wes Keller  
Attn: Jim Pound

**FROM:** Jean M. Mischel  
Legislative Counsel

I have enclosed a draft version of an education voucher system based generally on the material provided, accommodating your desire to avoid a significant rewrite of the current funding system for public education and to base the draft on the "mission statement" rather than the model legislation provided. I tried to condense the proposal to that end but received no specific staff direction in doing so. The time allotted in your request does not allow for rewrites.

Although this proposal is unlike your previous education voucher request this session in that this draft attempts to provide vouchers as scholarships for use at both public and private schools, it is my opinion that the draft will not survive Alaska's express constitutional prohibition against providing public funds for the benefit of a private school under article VII, section 1. That section provides, in part:

No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

The Alaska Supreme Court has interpreted that section to mean that a tuition assistance program awarding students attending private colleges an amount equal to the difference between public and private college tuition is unconstitutional. Sheldon Jackson College v. State, 599 P.2d 127 (Alaska 1979).

Sheldon Jackson is directly relevant to the proposed scholarship system. In that case, the Court established a three part test for determining the validity of public programs that provide economic benefit to private schools. First, the Court looks at the breadth of the class to which the economic benefits are directed. Second, the Court looks at how the public money is to be used; i.e., whether the benefit to the private school is incidental to education (as with fire and police protection) or whether it amounts to direct aid to education (as with tuition and books). Third, the Court looks at the magnitude of the benefit to private education. Significantly, the Court noted that channeling funds to a

private school through an intermediary (such as the student or parent) will not save an otherwise unconstitutional program providing aid to private schools.

In the Sheldon Jackson case, the Court struck down the state's tuition assistance program as violative of all three parts of the test. The class which the tuition assistance program benefitted consisted almost entirely of private schools, the funds were to be used directly for educational purposes (tuition), the benefit conferred on these schools was quite substantial, and the fact that the money was actually paid directly to the students, not the schools, did not mitigate the fact that the students were required to turn the money directly over to the private schools.

The proposed "scholarship" system (which appears to be a voucher system) suffers some of the same infirmities as the tuition assistance program did despite the inclusion of public schools. The money would go to private schools or public schools for the cost of education and facilities. A large part of the class benefitted would be private schools since the public schools currently receive public funding.

The second part of the test would also be violated because the vouchers would be used as a direct benefit to private education rather than an incidental benefit.

The third part of the test, the magnitude of the benefit, also presents a problem. The vouchers are to cover the entire cost of tuition or the cost of tuition plus the facilities spending. Obviously, the benefit to private schools would be substantial and, consequently, unconstitutional.

The proposed scholarship system is also potentially in violation of the "establishment" and "freedom of religion" clauses of article I, section 4 of the Constitution of the State of Alaska. I am aware that voucher systems in Wisconsin and Ohio have survived constitutional challenge under the U.S. First Amendment. See Zelman v. Simmon - Harris 536 U.S. 639 (2002). However, that does not mean scholarships would be upheld under art. I, section 4 of the state constitution. In addition, the Court in Sheldon Jackson noted that First Amendment cases upholding limited forms of assistance to religious schools have no relevance to the preceding analysis of article VII, section 1 of the state constitution. The prohibition against state aid to any private school is much broader than the prohibition under the First Amendment which relates only to religious schools. For example, the United States Supreme Court case upholding a Minnesota program of tax credits for public and private school expenses against a First Amendment challenge (Mueller v. Allen, 463 U.S. 388 (1983)) is not relevant to the analysis of the proposed voucher system in Alaska. Not only did that case involve a tax credit system rather than a voucher system, but it was challenged under the First Amendment. The case did not consider the kind of prohibition against direct aid to private schools found in the Alaska constitution. In other words, even if the scholarship system could survive scrutiny under the First Amendment, it would still violate article VII, section 1 of the state constitution.

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In order to survive constitutional scrutiny under the state constitution, a voucher system, such as the proposed parental choice scholarship system, would have to satisfy all three parts of the Sheldon Jackson test and scrutiny under the First Amendment. It is difficult to imagine a voucher system, as I understand the voucher system to work, that would not violate the constitution. The system would have to benefit students in public as well as private schools without giving any substantial direct benefit to education in the private schools. By its nature, the voucher system seems to work against this.

The problem could be circumvented by amending article VII, section 1 of the state constitution as you have proposed in a separate draft resolution.

In addition to constitutional considerations, this draft leaves many unanswered and potentially very expensive questions. For example, do you really intend to make a home district pay transportation costs? How is the student count and scholarship funding affected if a student transfers midyear? How does a public school district which is paid under the existing formula (AS 14.17) account for direct scholarship payments to schools? The material provides no direction on these and other questions that arise under Alaska law.

If I may be of further assistance, please feel free to contact me.

JMM:ljw  
10-436.ljw

Enclosure