

ALASKA LEGISLATURE

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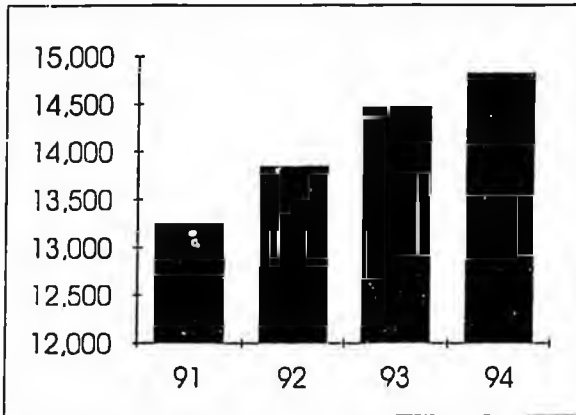
HOUSE and SENATE FINANCE COMMITTEE FILES, 1995-1996

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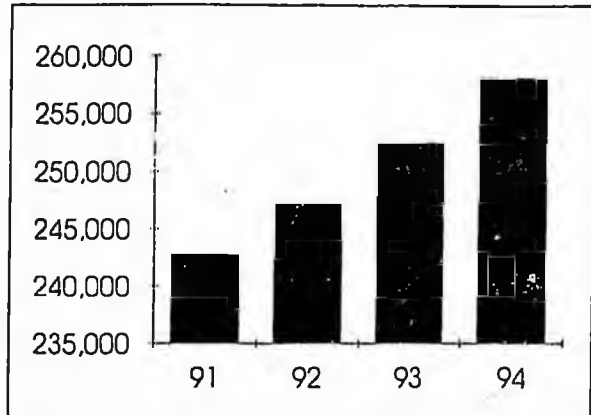
Department of Labor

GF Budget versus Alaska Work Force

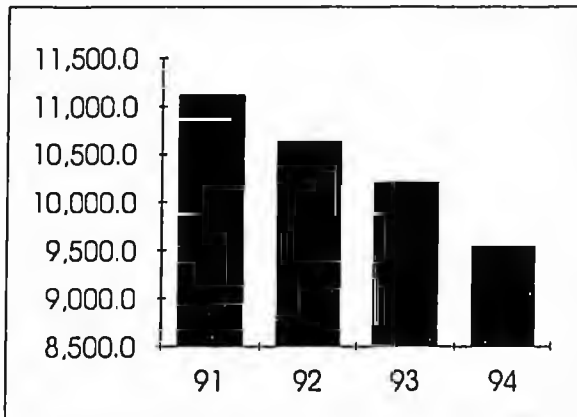
Number of Employers



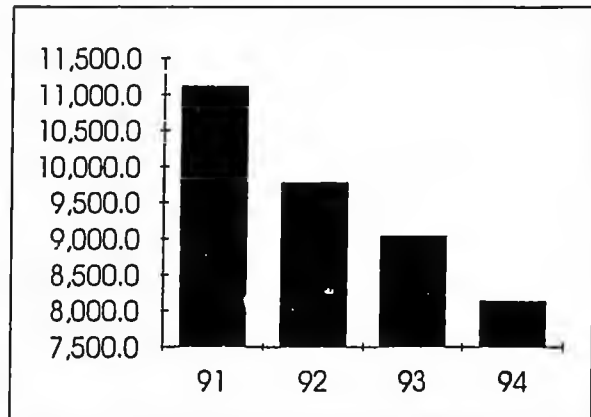
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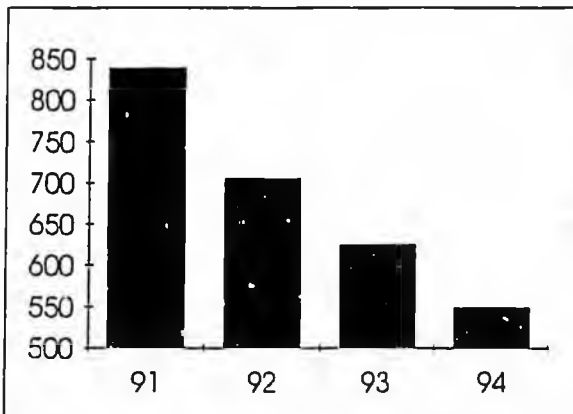
General Fund Budget



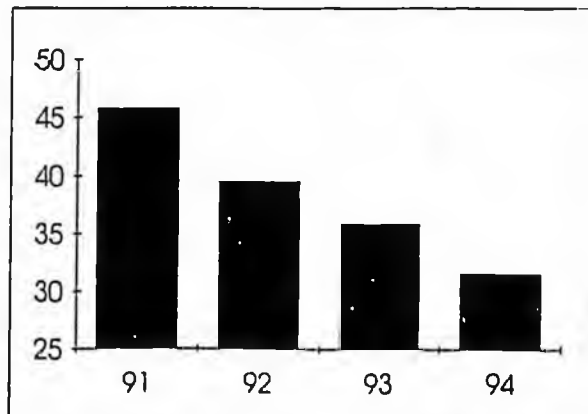
GF Budget in 1991 Dollars



1991 Dollars per Employer



1991 Dollars per Employee



STATE OF ALASKA

DEPARTMENT OF EDUCATION OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

GOLDBELT PLACE
801 WEST 10TH STREET, SUITE 200
JUNEAU, ALASKA 99801-1894

February 7, 1995

The Honorable Mark Hanley
The Honorable Richard Foster
Co-Chairs, House Finance Committee
State Capitol
Juneau, AK 99801-1182

Dear Co-Chairs Hanley and Foster:

During the Department of Education's overview before the House Finance Committee on January 23, committee members asked specific questions regarding the court decision on the transportation of non-public school students and the reauthorization of federal Impact Aid. Enclosed for your information are copies of the court's decision in *Ten Eyck v. State of Alaska*, correspondence between the department and school districts regarding Impact Aid, and the federal Impact Aid statute, with the appropriate text highlighted on page 248.

In response to the court's decision regarding transportation of non-public school students, the department prepared draft regulations that were distributed for public comment in August of 1994. Because of the negative public response and lack of funding for non-public pupil transportation, the State Board of Education tabled the regulations. Copies of the draft regulations on non-public pupil transportation and public comments received are enclosed for your information. The department has requested \$3,000,000 in FY96 for non-public pupil transportation reimbursement, which includes \$327,400 currently being reimbursed to the Fairbanks School District for dedicated transportation routes for Monroe High School.

In recent years the total receipt of Impact Aid has been about \$75,000,000. Local districts have a net benefit of approximately \$32,000,000, due to an annual reduction in the general fund amount of state aid to the same districts of \$43,000,000. The district benefit comes from the portion of the Impact Aid which is designated as Indian Lands add-on and Special Education add-on, as well as the 10% minimum, which is not considered under the state law in determining foundation entitlement. Impact Aid appropriations have reduced Alaska's receipt and the FY96 deduct is now estimated at \$35,000,000. The amount of local revenue which a school district can receive is limited, in order to comply with the federal revenue disparity test. Disparity is a measure of the differences in revenue available to fund the current operations of each individual school district. Prior to October 1994, disparity calculations and the 25% maximum disparity were set by federal regulation. Based on the recent re-authorization, this process is now controlled by district wealth values and disparity standards set forth in federal statutes.


Letter, Mr. Mark Hanley
February 7, 1995
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Revenue disparity will be calculated utilizing actual data from two years prior. An exception to the two year prior data rule exists in the federal law if a state substantially revises its public school funding formula. Beginning in FY98 the disparity limit is set at 20%. If further restrictions of local contributions are not implemented by July 1, 1995 or if a substantially revised formula is not submitted to and approved by the U.S. Secretary of Education by July 1, 1997, the general fund portion of the foundation program entitlement may increase by \$35,000,000 to \$43,000,000 in FY98.

The reauthorization of federal Impact Aid changing the disparity requirement from 25% to 20% for FY98 will require the state to address the existing local cap in FY96 either through regulation or by making a commitment to substantially revise the Foundation Program. Another option is to do nothing and gamble that the actual disparity in FY96 and subsequent years will be less than 20%, without placing further restrictions on local contributions. The FY93 disparity was 19.81% which is the most recent year available. As the committee chair suggested there are a variety of other options. Regardless of the avenue taken, if the state continues to recognize Impact Aid in the formula, failure to meet the required disparity standard in FY96 may result in substantial monetary penalties in the future.

These are complex issues that will require the collective efforts of the administration, the legislature, school districts and the public to find solutions. The department has devoted significant resources to these issues and will be happy to assist you and the members of the committee in your deliberations.

Sincerely,



Jerry Covey
Commissioner

cc: House Finance Committee Members

Enclosures

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

CAMILLE TEN EYCK and ROBERT
TEN EYCK on their own behalf and
as next friends and parents of
MEGHAN TEN EYCK, HAYLEY TEN EYCK
and CAITLIN TEN EYCK, and on
behalf of all other persons
similarly situated,

Plaintiffs,

v.

STATE OF ALASKA, DEPARTMENT OF
EDUCATION; and JERRY COVEY,
COMMISSIONER OF EDUCATION,

Defendants.

Filed in the Trial Courts
STATE OF ALASKA, FOURTH DISTRICT

JAN 25 1994

Clerk of the Trial Courts

By _____ Deputy

Case No. 4PA-93-2135 Civil

MEMORANDUM DECISION

This is a suit for injunctive and declaratory relief seeking to require the state Department of Education to continue the funding of bus transportation to qualifying nonpublic school students. Plaintiffs filed this case as a class action and have moved for court recognition of their status as representatives of the class. Also before the court are the defendants', State of Alaska, Department of Education, and Jerry Covey, Commissioner of Education [collectively, the state], motion for partial summary judgment on the issue of the constitutionality of AS 14.09.020 and plaintiffs' cross motion for summary judgment. In addition, the plaintiffs seek recognition as public interest litigants. These motions are discussed below.

FACTUAL AND PROCEDURAL HISTORY

Plaintiffs Camilla Ten Eyck and Robert Ten Eyck brought the present motion on their own behalf, as parents of Meghan Ten Eyck, Hayley Ten Eyck, and Caitlin Ten Eyck, and on behalf of all other persons similarly situated. The Ten Eyck family resides in North Pole. The Ten Eyck children attend Immaculate Conception Elementary School [ICS], a private Catholic school in Fairbanks, and are transported to school on buses funded by the state under AS 14.09.023.^{1/}

Since the fall of 1980, the state has been reimbursing the Fairbanks North Star Borough School District [Fairbanks District] for the transportation of students attending ICS and Monroe High School, a Catholic high school in Fairbanks [collectively, Monroe/ICS]. In 1990, the state Department of Education [DOE] entered into a five year pupil reimbursement agreement with the Fairbanks District. Since that time, the Fairbanks District has operated on the understanding that it would be fully reimbursed for up to nine "regular route" buses to provide service to nonpublic school students in the Fairbanks area unless the pro-ration reimbursement from the state falls below 89 percent of the approved expenses.

DOE has reimbursed the Fairbanks District for the

^{1/}The buses are privately owned and are operated under contract with the Fairbanks North Star Borough School District.

transport of nonpublic school students under that agreement for the past three years. Of the approximately 600 students that attend Monroe/ICS, an average of 233 currently use the publicly funded buses. Monroe/ICS has never provided bus service to its students.

The events leading up to the cessation of public funding of buses for these private school students and precipitating this suit began in June 1993. At that time, when the Kenai Peninsula Borough School District [Kenai District] sought a clarification from DOE concerning the state's policy on transporting nonpublic school students on routes extending beyond existing public school bus routes. The Kenai District verbally requested a route extension to its existing bus schedule in order to pick up a nonpublic school student living beyond the existing public school bus route.^{1/}

Duane Guiley, Director of Finance for DOE, denied the request based on his understanding that AS 14.09.020 authorized transportation of nonpublic school students only on routes necessary to transport public school students. Subsequently, Guiley learned that DOE was reimbursing the Fairbanks District for the transportation of nonpublic school students on dedicated nonpublic routes to and from Monroe/ICS.

^{1/}Until that time, the Kenai District had been allowing nonpublic school students living along established public school routes to ride public school buses to their nonpublic schools.

Guilay conferred with the Commissioner of Education and the Department of Law to determine whether reimbursement for the transportation of the nonpublic school students was legal. The Department of Law advised that a formal 1978 Attorney General Opinion had concluded that the busing of nonpublic school students violated the direct benefits clause of the Alaska Constitution. The Department further opined that the 1978 opinion was a valid statement of existing case law.^{2/}

On August 13, 1993, Guilay and Covey informed Barbara Martin, Assistant Superintendent of Business, and Rick Cross, Superintendent of the Fairbanks District, of the possibility that funds would be disapproved for nonpublic school transportation. DOE notified the Fairbanks District by letter dated August 19, 1993, of its final decision to disapprove funding for the transportation of nonpublic school students in Fairbanks.

On August 20, 1993, Covey officially notified all school superintendents that DOE would no longer approve funding for any nonpublic school student transportation and that districts were no longer to transport nonpublic school students on

^{2/}The Department of Law also noted that, regardless of the statute's constitutionality, the transportation provided to nonpublic school students in Fairbanks appeared to go beyond the statute. That issue is not presented in this case. The state has stipulated that, for purposes of this case, the nonpublic segments of bus routes in Fairbanks comply with AS 14.09.020. The evidence that North Pole students are transported to Fairbanks to attend public school facilities supports this conclusion.

either dedicated nonpublic school routes or existing public school routes. Covey requested that any affected districts supply revised transportation schedules and vehicle needs. Kodiak, Kenai, and Ketchikan^{1/} each replied that it had been busing nonpublic school students along existing public school routes. No school district other than Fairbanks reported bus routes^{2/} dedicated solely to nonpublic school students.

During the course of this litigation, the Department of Law discovered and disclosed a memorandum dated December 17, 1979, from then Attorney General Avrum M. Gross to Marshall Lind, the Commissioner of DOE. In the memorandum, Gross stated his opinion that, based on the Supreme Court's decision in Sheldon Jackson College v. State,^{3/} the busing of nonpublic school students would not violate Article VII, Section 1 of the Alaska

^{1/}Kodiak and Kenai responded in writing and Ketchikan responded verbally.

^{2/}"bus route" is defined in 4 AAC 27.990(2) as:

the shortest distance necessary to transport a given group of pupils to and from a pickup point nearest their homes and their regular attendance center, but does not include the distance from where a transportation vehicle is garaged to the start of its route.

In Fairbanks, eight routes are used exclusively for the transport of nonpublic school students. The same buses are used at other times of the day to transport public school students.

^{3/}599 P.2d 127 (Alaska 1979).

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Constitution. He advised that his new opinion superseded the opinion of June 12, 1978.^{1/} The Department of Law asserts in this case that the December 1979 opinion expressed by Gross does not affect the state's position in the current action.

Plaintiffs brought the instant action seeking a declaratory judgment that AS 14.09.020 is constitutional and a permanent injunction prohibiting the state from withholding reimbursement under the statute. Plaintiffs have alleged a denial of rights under the state constitution, breach of contract for failure to perform in accordance with the Pupil Reimbursement Agreement^{2/}, and violations of procedural due process by being deprived of the opportunity to be heard before DOE made its final decision to disapprove funding for nonpublic school students.

The state did not oppose a temporary restraining order, which the court issued on August 25, 1993. Beginning on September 21, 1993, the court held a consolidated evidentiary hearing on the plaintiffs' motion for a preliminary injunction and the merits of the case. On September 23, 1993, the court issued a preliminary injunction continuing the application of AS

^{1/}The June 12, 1978, opinion was relied upon by the state in its August 20, 1993, decision halting bus service to private school students. The state officials were unaware of the December 17, 1979, Attorney General opinion.

^{2/}Plaintiffs assert that they are third party beneficiaries under the agreement and reasonably relied on the agreement in making educational and life decisions.

14.09.020 and requiring the state to continue to reimburse any school districts providing bus transportation to nonpublic school students.^{2/}

DISCUSSION

Motion for Class Certification

Whether this case may be maintained as a class action and the identity of the class to be represented are matters governed by Alaska Civil Rule 23. Civil Rule 23 provides that one or more members of a class may sue or be sued as representative parties on behalf of all members of that class only if:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or facts common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

In the instant case, plaintiffs would define the class as including all students attending or wishing to attend nonpublic schools in Alaska, together with their parents, who are aggrieved by the state's decision to discontinue funding for transportation of students to nonpublic schools under AS 14.09.020.

^{2/}The court did not require the plaintiff to post a bond.

Clearly, such an expansive description of the class yields members so numerous as to make their joinder impracticable.

Assuming class representation is otherwise appropriate, the membership proposed by plaintiffs is too broad, including individuals who have little or no connection with the claim being litigated and who are not now and would never be affected by DOE's decision.^{10/} Moreover, the parameters of the proposed class would be dependent on a general and indefinite state of mind, such that there is "no rational or reasonable process of defining and determining the extent and character of the class, and what individuals are in the class." Vietnam Veterans Against the War, 63 F.R.D. at 680.

This court, however, has the discretion to limit or redefine the class in an appropriate manner if the proposed parameters of the class do not meet a minimum standard of definiteness. 7A C. Wright, A. Miller & M. Kane, Federal Practice and Procedure, §1760 at 123-24 (1986). Notwithstanding the many differing theories advanced by plaintiffs, this case turns on the constitutionality of AS 14.09.020. Plaintiffs here are challeng-

^{10/} See Vietnam Veterans Against the War v. Benicks, 63 F.R.D. 675, 680 (1974) (class defined as "persons who attend or participate or who wish to attend or participate in any public assembly or demonstration," was too vague and imprecise to be adequate under Federal Rule of Civil Procedure 23). The Alaska Supreme Court has recognized the identity between Civil Rule 23 and the corresponding federal rule and has found federal case law persuasive. Nolan v. Sea Airactive, Inc., 627 P.2d 1035, 1041 (Alaska 1981).

ing the stated attempt to enforce a constitutional provision.

Thus, the class must be limited to only those students, together with their parents, against whom the constitutional provision was being invoked, *i.e.*, nonpublic school students riding buses funded under AS 14.09.020, rather than all students in the state, as there is no justiciable controversy present unless the class is so limited. The fact that the specific members of the class may change during the course of the action is not important. 7A C. Wright, A. Miller, M. Kane, Federal Practice & Procedure, §1760 at 120 (1986).

Having determined that it is possible to define a class, the court must next examine the size of that class. In Fairbanks alone, an average of 233 students are bused under AS 14.09.020 to Monroe/ICS. In addition, the Kodiak Island Borough School District, the Kenai Peninsula Borough School District, and the Ketchikan School District bus nonpublic school students at state expense. The number of nonpublic school students riding state funded buses is sufficiently large to make joinder impractical:

While not disputing the numerosity of the potential class, the state argues that issues of fact distinguish members of the class residing in different school districts. Ostensibly, the state is referring to the fact that nonpublic school students in districts other than Fairbanks are transported on regularly scheduled public school routes, not dedicated nonpublic school

routes. The state contends that these factual issues make it impossible for the representative parties to protect the interests of the class fairly and adequately.

The supreme court addressed a similar issue in State v. Alex, 646 P.2d 203 (Alaska 1982). There, commercial fishers brought a class action against private aquaculture associations and the state, alleging that a statute authorizing the private aquaculture associations to collect mandatory assessments on the sale of salmon by commercial fishers was unconstitutional. Defendants appealed the trial court's certification of the class, contending that plaintiffs could not provide adequate representation for the class because they had interests antagonistic to other members of the class.

In upholding the trial court's certification of the class, the court reasoned that, in a suit to strike down a statute as unconstitutional, the requirement of adequate representation loses vitality as a finding of unconstitutionality will affect all class members equally:

Thus, even if [a] plaintiff is not a proper representative in the traditional sense, striking a class claim will not effectively change the end result if the party successfully proceeds on an individual basis.

Id. at 214, quoting 7 C. Wright & A. Miller, Federal Practice and Procedure, §1771, at 664 (1972).

The Alex court also noted that, in an action to declare a statute unconstitutional, "there are only two sides to the ar-

gument; either the statute is constitutional or it is not." Id. If there are no inherent conflicts amongst the interests of the individual class members, e.g., rights to different shares of a limited fund, "the interests of class members antagonistic to the representatives' constitutional attack will usually be adequately represented by the defendants." Id.

While the plaintiffs here seek to uphold, not strike down, the constitutionality of a statute, the reasoning in Alax is still applicable. The state contends that the statute at issue is unconstitutional, but has stipulated to the fact that the busing of nonpublic school students in Fairbanks conforms to AS 14.09.020. The issue before the court then is not whether the state is implementing the statute properly, but whether AS 14.09.020 violates Article VII, Section 1 of the Alaska Constitution.

While the use of dedicated nonpublic school routes in Fairbanks may test the outer limits of the statute, a finding that AS 14.09.020 is unconstitutional after an examination of the facts as they exist in Fairbanks would affect all nonpublic school students riding public school buses in the same way. That is, either the statute is constitutional and state funded busing of nonpublic school students continues or the statute violates the direct support clause and the practice must cease. The basic interest of all class members is the same, i.e., receiving state funded transportation to nonpublic schools. It is irrelevant

whether the students elsewhere in the state "piggy-back" rides on existing bus routes. The claims and defenses of the class members are similar and any factual distinctions alluded to by the state do not prevent the named plaintiffs from fairly and adequately representing the interests of all class members.

Having determined that the requirements of Rule 23(a) are met, the court must next determine whether the action falls within Rule 23(b) before it may certify the case as a class action. Plaintiffs do not specify which type of class action under Rule 23(b) they are seeking. The state argues that, if the action is certified as a class action, it should fall under Rule 23(b)(2). The court agrees.

Civil Rule 23(b)(2) allows a class action to be maintained where:

The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

A.R.Civ.P. 23(b)(2). Two factors must be present in order for an action to fall within section (b)(2):

(1) the opposing party's conduct or refusal to act must be 'generally applicable' to the class and

(2) final injunctive or corresponding declaratory relief must be appropriate for the class.

7A C. Wright, A. Miller & M. Kane, Federal Practice & Procedure,

§1775 at 447-48 (1986). An action is "generally applicable" if the party opposing the class is not required to act directly against each member of the class, but acts generally as to the entire class. Id.

Courts apply Rule 23(b)(2) where the party opposing the class has acted on grounds that are applicable to the entire class, e.g., a regulatory scheme. For example, in Alex, the court noted that an action challenging the constitutionality of a statute properly fall within Rule 23(b)(2). State v. Alex, 646 P.2d at 213 n.10.

Here the state is acting under a constitutional provision that applies equally to all members of the class. The state is not required to act individually against each class member and the injunctive and declaratory relief sought by plaintiffs would affect all class members similarly. Thus, plaintiffs may bring a class action suit under Alaska Civil Rule 23(b)(2) on behalf of all nonpublic school students riding buses funded by the state under AS 14.09.020 to and from nonpublic schools and the parents of those students.

Cross Motions for Summary Judgment -- The Law

In 1961, the fledgling Alaska Supreme Court determined that a statute providing for free transportation of students to nonpublic schools violated the Alaska Organic Act provision prohibiting the appropriation of public money for support of nonpub-

lic schools and was not validated with the enactment of Article VII, Section 1 of the Alaska Constitution.^{11/} Matthews v. Quintin, 362 P.2d 932 (Alaska 1961), cert. denied, 368 U.S. 817 (1962).^{12/} The state relies entirely on Matthews in its motion for partial summary judgment.

In 1972, ten years after the Matthews decision, the Alaska Legislature enacted AS 14.09.020, similar to the statute previously struck down and which provides, in pertinent part:

In those places in the state where the department or a school district provides transportation for children attending public schools, the department also shall provide transportation for children who . . . attend nonpublic schools that are administered in compliance with state law where the children, in order to reach the nonpublic schools, must travel distances comparable to, and over routes the same as, the distances and routes over which the children attending public schools are transported. . . .

Plaintiffs here ask the court to find that the provision of

^{11/}Article VII, Section 1 reads:

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 . . . 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.

^{12/}The three member court was sharply divided. Justice Diamond dissented from what he called a "harsh and unjust conclusion." Id. at 944.

transportation to nonpublic school students under AS 14.09.020 is constitutional. The state asserts that under Matthews AS 14.09.020 is unconstitutional.

At first blush, the issues in this case appear easily resolved under Matthews. The difficulty arises, however, in light of the 1979 Supreme Court decision in Sheldon Jackson College v. State, 599 P.2d 127 (1979).

In Sheldon Jackson, the court examined the state tuition grant program, AS 14.40.776(a). The program awarded state residents attending private colleges in state an amount generally equal to the difference between the tuition charged by a public college in the same area.^{11/} The court held that the program was not neutral and was, in its effect, a direct benefit to the educational functions of nonpublic educational institutions and, thus, violated Article VII, Section 1 of the state constitution.

In Sheldon Jackson, the court established guidelines for use in determining generally the type of government action intended to be prohibited by Article VII's direct benefit clause. First, a court is directed to examine whether the provision governing aid to nonpublic schools provides a neutral and nonselective benefit. Next, the court must determine whether the state aid program provides aid to education conducted outside the pub-

^{11/}The grants were \$1,850 for each eligible student in 1975-76, and \$2,500 per student in 1976-77.

lic schools. Third, the court must consider the magnitude of the benefit. Finally, the court must look behind the superficial form of the benefit and determine whether funds are merely being channeled through an intermediary to the private school.

In establishing these guidelines, the Sheldon Jackson court pointedly commented that it was not relying on Matthews and, thus, did not have the occasion to either overrule or reaffirm Matthews. 599 P.2d at 130 n.20. The court acknowledged, however, that a "substantial question . . . can be raised as to [Matthews'] vitality in light of the analysis which we employ in the present opinion." Id. Thus, this court must now analyze the statute at issue under both Matthews and Sheldon Jackson.^{14/}

^{14/}As the state points out, a number of states have interpreted constitutional provisions prohibiting benefits to religious or private schools to extend to busing of nonpublic school students. See, e.g., Opinion of the Justices, 216 A.2d 668 (Del. 1966); Enaldi v. Engelking, 488 P.2d 860 (Idaho 1971), cert. denied, 406 U.S. 957 (1972); Spears v. Honda, 449 P.2d 130 (Hawaii 1968); Nooksack Valley School District, No. 506, 207 P.2d 198 (Wash. 1949). The state neglects to mention, however, that many other states have upheld such statutes and that, beginning in the early 1970's, there was a noticeable shift in the courts towards upholding statutes providing public funding for the transportation of nonpublic school students. See, e.g., Attorney General v. School Committee of Essex, 439 N.E.2d 770 (Mass. 1982) (statute providing transportation to students attending nonpublic schools in compliance with compulsory attendance requirements did not violate provision of state constitution prohibiting aid to private schools); Americans United, Inc. as Protestants v. Ind. School Dist. No. 622, 179 N.W.2d 146 (Minn. 1970), appeal dismissed 403 U.S. 908 (1971) (statute authorizing use of public funds to transport students to sectarian schools did not violate constitutional provision prohibiting use of public money for support of parochial schools); Loringfield School Dist. v. Dept. of Ed., 397 A.2d 1184 (Penn.), appeal dismissed 443 U.S. 801 (continued...)

Underlying this court's analysis is the general principle of statutory construction that first affords a statute a presumption of constitutional validity. See Mathava, 362 P.2d at 945.^{14/} The state, as the party challenging the constitutionality of the statute, bears the burden of overcoming this presumption.

First, AS 14.09.020 on its face confers benefits equally upon students attending public and nonpublic schools. Transportation is available to nonpublic school students only in those places where publicly funded transportation is provided for public school students. AS 14.09.020. Moreover, the language provides for the equal treatment of public and nonpublic school

^{14/}(...continued)

(1979) (statute requiring that both nonpublic school and public school pupils be transported to their schools within district and within ten miles outside district boundaries did not violate Establishment Clause nor Equal Protection Clause). See also Zobrest v. Catalina Foothills School Dist., 113 S. Ct. 2462 (1993) (upholding against an Establishment Clause challenge the provision of sign language interpreter to deaf nonpublic school student under the Individuals with Disabilities Education Act). In upholding busing statutes, courts generally equate provisions of transportation services with other services such as sewers, streets, sidewalks, and police and fire protection, which are furnished to nonpublic schools as members of the general public. They also stress that public busing permits the safe and expeditious compliance with compulsory education laws. Any benefit to the schools, it is reasoned, is incidental and not connected with their educational purposes.

^{14/}The issues here do not present an Establishment Clause question as AS 14.09.020 makes no distinction between religious and secular aid. The distinction is strictly between public and nonpublic schools.

students by requiring that busing be provided only where nonpublic school students "travel distances comparable to, and over routes the same as," the distances and routes over which public school students travel. *Id.*

The state argues that, as applied, the statute confers benefits to nonpublic school students not available to public school students. In support of this argument, it notes that in the Fairbanks District public school students are not bused to the school of their choice. A public school student may attend a school other than that assigned only on a space available basis and without publicly funded transportation to that school.^{14/}

Nothing in AS 14.09.010 or .020, however, prohibits the use of public funds to transport a public school student to the school of his or her choice. Whether a district denies public school students busing to any public school in the district has no bearing on the statutorily imposed duty of the district to bus nonpublic school students to their nonpublic schools. Thus, the fact that DOE or a local school district determines that public school students are not eligible to be bused beyond the schools assigned does not require the court to invalidate AS 14.09.020.

^{14/}On the other hand, in the Fairbanks District, some public school students are bused beyond the school in their local attendance center to Howard Luke Alternative School, Hutchison Career Center, or other special education programs.

Nevertheless, the court cannot accept a construction of AS 14.09.020 that would allow nonpublic school students to be transported to wherever they choose to attend school. At its extreme, such a construction would lead to an absurd result, an entitling Fairbanks students to be transported to nonpublic schools in Anchorage on a daily basis. Such a construction, however, is prevented by the very language of the statute.

AS 14.09.020 must be construed to mean that a student is eligible for transportation to a nonpublic school if the student lives the required distance from the nonpublic school or along a designated hazardous route.¹⁷ Based on the principles of equality embodied in the statute, only nonpublic school students living within a distance that is equal to or less than the furthest distance a public school student would be bused by that district are eligible for transportation under AS 14.09.020. A student is not entitled to transportation under AS 14.09.020 to nonpublic schools beyond these parameters.¹⁸ Based on this reading, the statute does not favor nonpublic school students and

¹⁷ See *Matthews*, 362 P.2d at 338 (crucial distance in determining eligibility for publicly funded transportation was distance to school student is attending, not distance to nearest public school).

¹⁸ The hardship this may create for some students cannot affect the court's decision.

does not offend the concept of neutrality.^{19/}

Second, the funds expended under AS 14.09.020 do not aid education outside the public schools. In analysing this factor in Sheldon Jackson the court recognized that:

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. . . .

599 P.2d at 130. The court suggested, based on the comments of the framers of the constitution, that Article VII would not bar such incidental support. 599 P.2d at 130.

The court's analysis in Sheldon Jackson requires a more extensive inquiry than that employed in Matthave. In Matthave, the court rejected the child benefit theory and concluded that publicly funded transportation provides a direct benefit to non-public schools. 362 P.2d at 941.^{20/} Without further inquiry,

^{19/} See Attorney General v. School Committee of Essex, 439 N.E.2d 770, 777 (Mass. 1982) (where legislature intended equal treatment of private school students, statute would not be interpreted to provide transportation to private school students to wherever they choose to attend, but must be construed to place a measure of reasonableness on the transportation of private school students).

^{20/} Plaintiffs urge the court to adopt the child benefit theory "since the logic of the Matthave case has not been followed by later Alaska Supreme Court decisions. . ." Plaintiff's reply brief, October 15, 1993, at 14. Matthave was not overruled by the court in Sheldon Jackson, 599 P.2d at 130 n.20, or any other case. Consequently, while this court may review the statute at issue under both Matthave and Sheldon Jackson, this court is not free to ignore totally the court's findings in Matthave and adopt the child benefit theory here.

the court held that any aid that accrued directly to a nonpublic school was prohibited under the direct benefits clause in the Organic Act and would not be sustained under the analogous provision in the constitution. Id. With the benefit of the full transcripts of the constitutional convention, Sheldon Jackson expanded the court's role in reviewing a statute challenged under Article VII, Section 1 to include an inquiry as to whether the aid acts as a direct subsidy to the educational objectives of the nonpublic schools. 599 P.2d at 130.

Thus, under the second prong of the Sheldon Jackson analysis, the direct benefits clause of the constitution does not preclude incidental support to nonpublic schools that does not amount to aid to education outside the public schools.^{21/} Here, the funding of transportation for nonpublic schools is analogous to the provision of fire and police protection, traffic control, sewers, or other health and welfare services from which the entire community benefits and which have no role in the teaching function of the nonpublic school.^{22/} Any benefit received by the

^{21/} 599 P.2d at 130, citing Rosser v. Div. of Publ. Works of Md., 426 U.S. 736, 762 (1976); Maak v. Pittenger, 421 U.S. 349, 366 (1975).

^{22/} In Sheldon Jackson, the court stated:

[T]hough 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
(continued...)

school does not relieve it of an expense necessary for the education of its students..

The bus transportation in this case is such incidental support. It does not relieve the private schools from providing this service as the schools do not now and have never done so.^{21/} AS 14.09.020 does not, therefore, interfere with Article VII's "mandate that Alaska pursue its educational objectives through public education." Id. at 131.^{21/}

^{22/} (...continued)

to status and affiliation, and have universally been presumed to be constitutional.

599 P.2d at 130. The Matthews court also considered the police power of the state and noted that such powers must be exercised within constitutional limits and cannot be used to validate a statute otherwise in violation of the constitution. 362 P.2d at 944. This statement is not inconsistent with Sheldon Jackson in which the court implied that statutes protecting the health and welfare of the community would be upheld under Article VII, Section 1 of the constitution only if the statute is applied equally to all students and the benefit to the nonpublic school is not great. See 599 P.2d at 130.

^{21/} During the time period after Matthews when the busing program was halted, parents mobilized to provide transportation for Monroe/ICS students. The schools took no action.

^{21/} See Snyder v. Town of Newtown, 161 A.2d 770, 778-79 (Conn. 1960) (busing fosters education only to extent that children are protected from danger of modern traffic and hazards of bad weather and gathered in modern schools for better educational opportunities); Bloss v. School Com. of Springfield, 379 N.E.2d 578 (Mass. 1978) (lending of textbooks by a school committee to private school students was an unconstitutional use of public property to maintain or aid private schools; but was distinguished from the provision of busing, which "has no role in the teaching function, the school's essential enterprise"); American
(continued...)

Third, the analysis in Sheldon Jackson requires that the court find that the aid amounts to substantial assistance before it finds that the aid violates the direct benefits clause of the constitution.^{21/} In Sheldon Jackson, the court struck down a statute pursuant to which the college directly received approximately six hundred thousand dollars from 1975 through 1976.

Unlike the situation there, where the elimination of the state aid program clearly resulted in a dollar for dollar reduction in revenue to the college,^{21/} the financial hardship to nonpublic schools resulting from the elimination of public busing is not as easily calculated. The benefit cannot simply be measured as the cost to the state for the transportation, for these sums are not paid to the nonpublic school, either directly or indirectly.

^{21/} (...continued)

United Inc. as Protestants, 179 N.W.2d at 156 (busing does not directly involve support of the educational process).

^{21/} 599 P.2d at 130 ("A trivial, though direct, benefit may not rise to the level of a constitutional violation, whereas a substantial, though arguably indirect, benefit may.").

^{21/} After the loss of the grants, the college reported that:

it had suffered "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.

599 P.2d at 132.

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The provision of transportation does not lighten the financial burden faced by the nonpublic schools by freeing transportation funds to make them available for educational purposes. Recognizing that the magnitude of the benefit is difficult to measure and may not be accurately represented by the amount of state spending, the court finds that any aid that accrues to nonpublic schools under AS 14.09.020 is attenuated at best and that the benefit received by the nonpublic schools is remote, too incidental, and too indirect to render the statute constitutionally infirm.¹⁷ See Attorney General v. School Committee of Essex, 439 N.R.2d 770, 775 (Mass. 1982) (benefits busing brings to schools are not substantial aid, but aid which is quite remote).

The state suggests that under Article VII, Section 1, the "benefit" to the nonpublic school cannot be measured only in monetary terms, but must also be viewed in light of the "attractive services" the state expenditures allow nonpublic schools to offer their students. Specifically, the state contends that public funding for transportation allows the nonpublic schools to draw a more diverse student body and not only relieves the nonpublic school of that expense, but also enables the school to collect tuitions from those students who would not otherwise be able to procure transportation to the school. It is argued that

¹⁷That the cost to the state of conferring this benefit may vary slightly from year to year is not significant to the court's analysis here.

the elimination of publicly funded busing would require nonpublic schools to expend resources to provide that service and lose the tuitions of the students who would be unable to attend either because of the added cost of transportation or the unavailability of alternative methods of transport to and from the nonpublic schools.

This argument, however, lacks factual support. There is no basis for concluding that the costs of student transportation would be shifted to and borne by the nonpublic schools. Moreover, taken at face value, application of the state's argument would preclude any state aid to support health and welfare programs for students of nonpublic schools. Any such spending would reduce the burden on the nonpublic schools to provide those services and make those schools more attractive to potential students. Under Sheldon Jackson, a distinction must be made between aid for health and welfare programs and aid to education.

The fact that the funding of transportation under AS 14.09.020 encourages attendance at nonpublic schools to some degree cannot be ignored. The same could be said, however, for the existence of indoor plumbing, police and fire protection, telephone service, and other benefits derived from governmental services. Moreover, whether attendance is really benefitted is questionable where, as here, there is often a waiting list of students wanting to attend Monroe/ICS. If publicly funded transportation were eliminated and alternate busing were not funded by

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the elimination of publicly funded busing would require nonpublic schools to expend resources to provide that service and lose the tuitions of the students who would be unable to attend either because of the added cost of transportation or the unavailability of alternative methods of transport to and from the nonpublic schools.

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The fact that the funding of transportation under AS 14.09.020 encourages attendance at nonpublic schools to some degree cannot be ignored. The same could be said, however, for the existence of indoor plumbing, police and fire protection, telephone service, and other benefits derived from governmental services. Moreover, whether attendance is really benefitted is questionable where, as here, there is often a waiting list of students wanting to attend Monroe/ICS. If publicly funded transportation were eliminated and alternate busing were not funded by

the nonpublic schools, some students would find alternate means of transportation. In such a case, nonpublic schools would lose the tuition income of those students who would not be able to arrange alternate transportation, but only to the extent that the school would not then be able to fill those slots with new students. See *Tobrest v. Catalina Foothills School Dist.*, 113 S.Ct. 2462 (1993) (only indirect benefit school may receive under Individuals with Disabilities Education Act is handicapped student's tuition, and only if school could not otherwise fill that slot).

Moreover, there is an observable public benefit from the busing of these students. Nonpublic school students are transported more safely, more efficiently, and with less impact on the environment on public buses than if the students were forced to provide their own means of transportation to and from school. Based on the legitimate purposes of protecting the health and welfare of students required to attend school under the state's compulsory education law, and because the busing does not directly aid the educational function of the nonpublic schools, the court finds that the magnitude of the benefit derived under AS 14.09.020 does not violate Article VII, Section 1 of the constitution.^{28/}

^{28/}Plaintiffs argue that the cost of busing nonpublic school students must be balanced against the burden of educating those students in the public schools. This court, however, does not believe that a determination of whether funds expended by the state violate a constitutional provision turns on whether the
(continued...)

The final prong of the analysis established in Sheldon Jackson requires the court to examine whether funds channeled through an intermediary actually amount to direct aid to nonpublic schools. Plaintiffs argue that it is the independent bus contractors, and not the nonpublic schools, that actually benefit under AS 14.09.020. They assert that no money ever reaches the nonpublic schools and, thus, the elimination of funding would not save the nonpublic schools any money.

Plaintiffs' position is untenable under Sheldon Jackson. Whether DOE pays the bus contractors directly, reimburses the public schools districts, or releases the funds directly to the nonpublic schools, the result is the same and the accounting entry used by the state does not affect the constitutionality of the AS 14.09.020. Yet, it remains true that these funds are not paid, either directly or indirectly, to Monroe/ICS, inasmuch as these schools have never provided transportation services and thus receive no measurable direct financial benefit.

Based on the above reasoning, the court finds that AS 14.09.020 does not provide a significant direct benefit to the educational purpose of nonpublic schools and, as such, does not violate Article VII, Section 1 of the constitution.

20/ (...continued)

overall cost to the state would be increased if all nonpublic school children were to transfer to public schools if transportation were not provided.

Motion to Declare Plaintiffs Public Interest Litigants

Plaintiffs seek public interest litigant status. The court must determine whether plaintiffs seek to protect the public interest in bringing this action. The four criteria for determining whether a particular lawsuit involves the public interest are:

- 1) Is the case designed to effectuate strong public policies?
- 2) If the plaintiff succeeds will numerous people receive benefits from the lawsuit?
- 3) Can only a private party have been expected to bring the suit?
- 4) Would the purported public interest litigant have sufficient economic incentive to file suit even if the action involved only narrow issues lacking general importance?

Loeb v. Rasmussen, 822 P.2d 914 (Alaska 1991); Citizens Coalition v. McAlpine, 810 P.2d 162 (Alaska 1991); Anchorage Daily News v. Anchorage School Dist., 803 P.2d 402 (Alaska 1990). A litigant must satisfy all four criteria to be deemed a public interest litigant. Anchorage Daily News, 803 P.2d at 404.

Both parties agree that there are valid public purposes served by AS 14.09.020. The state argues, however, that plaintiffs' ultimate motivation is the protection of private economic interests; that is, the real issue is not the availability of safe transportation, but the state funding of such transportation. In addition, the state reasons that because students at-

tending non-qualifying nonpublic schools are not entitled to transportation under AS 14.09.020, plaintiffs' true motive cannot be the protection of the health and welfare of all students. Nevertheless, the court finds that plaintiffs' efforts to enforce and uphold the constitutionality of a statute properly enacted by the legislature sufficiently raise issues of public concern to satisfy the first criterion.

Next, plaintiffs argue that their efforts will benefit hundreds of public and nonpublic school students by assuring the continuity of their respective educational programs, now and in the future. The state contends in response that the harm to public school students from the influx of students from the nonpublic schools would be temporary and merely addresses the need for districts to have time to plan for an increase in students. Moreover, the state argues that if plaintiffs prevail, public school students would actually be harmed because an increase in the number of students eligible for transportation decreases the amounts of money available to transport each student. Nevertheless, given the health and safety issues previously recognized by both parties and the court, and benefits to the individual students and the community as a whole, the second criterion is met. See Southeast Alaska Conservation Council v. State, 665 P.2d 544, 554 (Alaska 1983) (every Alaskan would have benefited from suit brought to protect state's natural resources).

Plaintiffs then argue that only the students and their

parents benefit from the busing and the court cannot expect a school district to bring suit to enforce the statute. The state, on the other hand, contends that a school district could bring suit to protect its limited financial interests under the contract or to advance public safety arguments. While the district may be motivated to institute a legal action to protect its financial interest under the remaining term of its contract with the private bus company, it is unlikely that this limited financial interest would compel the district to bring a suit to determine the weightier issue of the constitutionality of a statute which, if successful, would require the district to provide transportation to nonpublic students until the legislature decided otherwise.^{12/}

Finally, plaintiffs state that they would not reap any economic benefits by prevailing in this case because free transportation would be available if their children attended public schools. The state contends that plaintiffs' argument is foreclosed by the fourth criterion. The state asserts that plaintiffs' economic interest in the litigation is equal to the cost of transporting these children to Monroe/ICS for the rest of their education or paying their share of the busing. Using low

^{12/} See School Committee of Essex, 439 N.E.2d at 773 (school committee lack standing to challenge constitutionality of statute requiring town to provide transportation to nonpublic school students because no personal or property rights of the committee were involved).

and estimates, the state calculates that the cost of providing busing to Monroe/ICS is \$112,000 per year. Using the average figure of 233 Monroe/ICS students riding the buses, the state calculates each student's share to be \$480 per year. Because the Ten Eycks have three children, the state argues that the cost to the Ten Eycks would be \$1,440 per year. Given that their youngest child is in kindergarten, the state contends that the cost of transportation to the Ten Eycks over the next 12 years would be substantial.

This approach, however, is too simplistic. It assumes that the Ten Eycks will be forced to bear the full cost of the busing and ignores the likelihood that, as in the past, car pools would be organized to transport students to Monroe/ICS. It assumes that the cost will be imposed for the academic lives of the Ten Eyck children. In addition, free public education and free transportation to public schools will be available to plaintiffs regardless of the outcome of this suit. Thus, it can just as accurately be argued that plaintiffs are, in essence, attempting to protect their ability to pay tuition to the private schools. The real and immediate economic benefit pales compared to the potential costs of engaging in constitutional litigation against the State of Alaska. Any minimal economic interest plaintiffs may have in litigating this issue does not defeat the issues of general importance to the community. Accordingly, the fourth criterion is met. See Citizen Coalition, 810 P.2d at 171.

CONCLUSION

Based on the foregoing analysis, the plaintiff's motion for class certification is GRANTED, in part, and DENIED, in part. Class action status is certified as defined herein. The state's motion for partial summary judgment on the constitutionality of AS 14.09.020 is DENIED and plaintiffs' cross motion for summary judgment on the same issue is GRANTED. Plaintiffs' motion for public interest litigant status is GRANTED.

DATED at Fairbanks, Alaska, this 25 day of January, 1994.

1-25-94
L.C. JG
H.S.H. H.C. JG
K.L.P.M.

R.D.S.P.
RICHARD D. SAVELL
Superior Court Judge

STATE OF ALASKA

DEPARTMENT OF EDUCATION OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

GOLDBELT PLACE
801 WEST 10TH STREET, SUITE 200
JUNEAU, ALASKA 99801-1894

(907) 465-2800
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NUMBERED MEMORANDUM 95-16

TO: Superintendents
Business Managers

FROM: Jerry Covey, Commissioner

DATE: November 16, 1994

SUBJECT: Impact Aid and Local Revenues

The Improving America's School Act, P.L. 103-382, signed on October 20, 1994, contained the revised Impact Aid Program legislation. Under that legislation, Impact Aid is now Title VIII of the Elementary and Secondary Education Act of 1965, and P.L. 81-874 and P.L. 81-815 are repealed.

Under the new Impact Aid law the disparity standard for equalized states, drops from 25% to 20% in 1998. The data used to measure disparity between school districts is from two years prior. The local cap in the foundation program, AS 14.17.025(b)(2), will require adjusting from 23% of basic need to approximately 19% beginning in FY96. AS 14.17.025(c) allows the department through regulation, to reduce the maximum local revenues a district may receive from its municipality to comply with federal equalization requirements. The department intends to promulgate regulations to this effect. I have enclosed a spreadsheet using projected FY95 foundation data to illustrate the effect of the change in the local cap.

If you have any questions, please contact Eddy Jeans, project assistant, at 465-8685.

Enclosure

cc: Eddy Jeans, Project Assistant
School Finance

TITLE VIII

H. R. 6-232

~~"(3) RECEIPT OF INFORMATION.—Such parents shall receive, in a manner and form understandable to such parents, including, if necessary and to the extent feasible, in the native language of such parents, the information required by this subsection. At a minimum, such parents shall receive—~~

~~"(A) timely information about projects funded under part A; and~~

~~"(B) if the parents of participating children so desire, notice of opportunities for regular meetings for the purpose of formulating and responding to recommendations from such parents.~~

~~"(4) SPECIAL RULE.—Students shall not be admitted to or excluded from any federally assisted education program merely on the basis of a surname or language-minority status.~~

"TITLE VIII—IMPACT AID

"SEC. 8001. PURPOSE.

"In order to fulfill the Federal responsibility to assist with the provision of educational services to federally connected children, because certain activities of the Federal Government place a financial burden on the local educational agencies serving areas where such activities are carried out, and to help such children meet challenging State standards, it is the purpose of this title to provide financial assistance to local educational agencies that—

"(1) experience a substantial and continuing financial burden due to the acquisition of real property by the United States;

"(2) educate children who reside on Federal property and whose parents are employed on Federal property;

"(3) educate children of parents who are in the military services and children who live in low-rent housing;

"(4) educate heavy concentrations of children whose parents are civilian employees of the Federal Government and do not reside on Federal property;

"(5) experience sudden and substantial increases or decreases in enrollments because of military realignments; or

"(6) need special assistance with capital expenditures for construction activities because of the enrollments of substantial numbers of children who reside on Federal lands.

"SEC. 8002. PAYMENTS RELATING TO FEDERAL ACQUISITION OF REAL PROPERTY.

"(a) IN GENERAL.—Where the Secretary, after consultation with any local educational agency and with the appropriate State educational agency, determines for a fiscal year ending prior to October 1, 1999—

"(1) that the United States owns Federal property in the local educational agency, and that such property—

"(A) has been acquired by the United States since 1938;

"(B) was not acquired by exchange for other Federal property in the local educational agency which the United States owned before 1939; and

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"(C) had an assessed value (determined as of the time or times when so acquired) aggregating 10 percent or more of the assessed value of—

"(i) all real property in the local educational agency (similarly determined as of the time or times when such Federal property was so acquired); or

"(ii) all real property in the local educational agency as assessed in the first year preceding or succeeding acquisition, whichever is greater, only if—

"(I) the assessment of all real property in the local educational agency is not made at the same time or times that such Federal property was so acquired and assessed; and

"(II) State law requires an assessment be made of property so acquired; and

"(2) that such agency is not being substantially compensated for the loss in revenue resulting from such ownership by increases in revenue accruing to the agency from the conduct of Federal activities with respect to such Federal property, then such agency shall be eligible to receive the amount described in subsection (b).

"(b) AMOUNT.—

"(1) IN GENERAL.—(A)(i) The amount that a local educational agency shall be paid under subsection (a) for a fiscal year shall be calculated in accordance with paragraph (2), except that such amount shall be reduced by the Secretary by an amount equal to the amount of revenue, if any, that such agency received during the previous fiscal year from activities conducted on such Federal property.

"(ii) For purposes of clause (i), the amount of revenue that a local educational agency receives during the previous fiscal year from activities conducted on Federal property shall not include payments received by the agency from the Secretary of Defense to support—

"(I) the operation of a domestic dependent elementary or secondary school; or

"(II) the provision of a free public education to dependents of members of the Armed Forces residing on or near a military installation.

"(B) If funds appropriated under section 8014(a) are insufficient to pay the amount determined under subparagraph (A), the Secretary shall ratably reduce the payment to each eligible local educational agency.

"(C) Notwithstanding any other provision of this subsection, a local educational agency may not be paid an amount under this section that, when added to the amount such agency receives under section 8003(b), exceeds the maximum amount that such agency is eligible to receive for such fiscal year under section 8003(b)(1)(C).

"(2) APPLICATION OF CURRENT LEVIED REAL PROPERTY TAX RATE.—In calculating the amount that a local educational agency is eligible to receive for a fiscal year, the Secretary shall apply the current levied real property tax rate for current expenditures levied by fiscally independent local educational agencies, or imputed for fiscally dependent local educational agencies, to the current annually determined aggregate assessed value of such acquired Federal property.

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"(3) DETERMINATION OF AGGREGATE ASSESSED VALUE.—

Such aggregate assessed value of such acquired Federal property shall be determined on the basis of the highest and best use of property adjacent to such acquired Federal property as of the time such value is determined, and provided to the Secretary, by the local official responsible for assessing the value of real property located in the jurisdiction of such local educational agency for the purpose of levying a property tax.

"(c) APPLICABILITY TO TENNESSEE VALLEY AUTHORITY ACT.—For the purpose of this section, any real property with respect to which payments are being made under section 13 of the Tennessee Valley Authority Act of 1933 shall not be regarded as Federal property.

"(d) OWNERSHIP BY UNITED STATES.—The United States shall be deemed to own Federal property for the purposes of this Act, where—

"(1) prior to the transfer of Federal property, the United States owned Federal property meeting the requirements of subparagraphs (A), (B), and (C) of subsection (a)(1); and

"(2) the United States transfers a portion of the property referred to in paragraph (1) to another nontaxable entity, and the United States—

"(A) restricts some or any construction on such property;

"(B) requires that the property be used in perpetuity for the public purposes for which the property was conveyed;

"(C) requires the grantee of the property to report to the Federal Government (or its agent) regarding information on the use of the property;

"(D) except with the approval of the Federal Government (or its agent), prohibits the sale, lease, assignment, or other disposal of the property unless such sale, lease, assignment, or other disposal is to another eligible government agency; and

"(E) reserves to the Federal Government a right of reversion at any time the Federal Government (or its agent) deems it necessary for the national defense.

"(e) LOCAL EDUCATIONAL AGENCY CONTAINING FOREST SERVICE LAND AND SERVING CERTAIN COUNTIES.—Beginning with fiscal year 1995, a local educational agency shall be deemed to meet the requirements of subsection (a)(1)(C) if such local educational agency meets the following requirements:

"(1) ACREAGE AND ACQUISITION BY THE FOREST SERVICE.—The local educational agency serves a school district that contains between 20,000 and 60,000 acres of land that has been acquired by the Forest Service of the Department of Agriculture between 1915 and 1990, as demonstrated by written evidence from the Forest Service satisfactory to the Secretary.

"(2) COUNTY CHARTER.—The local educational agency serves a county chartered under State law in 1875 or 1890.

"(f) SPECIAL RULE.—Beginning with fiscal year 1994, and notwithstanding any other provision of law limiting the period during which fiscal year 1994 funds may be obligated, the Secretary shall treat the local educational agency serving the Wheatland R-II School District, Wheatland, Missouri, as meeting the eligibility requirements of section 2(a)(1)(C) of the Act of September 30, 1950

(Public Law 874, 81st Congress) (as such section was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) (20 U.S.C. 237(a)(1)(C)) or subsection (a)(1)(C).

***SEC. 8003. PAYMENTS FOR ELIGIBLE FEDERALLY CONNECTED CHILDREN.**

***(a) COMPUTATION OF PAYMENT.—**

*(1) **IN GENERAL.**—For the purpose of computing the amount that a local educational agency is eligible to receive under subsection (b), (d), or (f) for any fiscal year, the Secretary shall determine the number of children who were in average daily attendance in the schools of such agency, and for whom such agency provided free public education, during the preceding school year and who, while in attendance at such schools—

*(A)(i) resided on Federal property with a parent employed on Federal property situated in whole or in part within the boundaries of the school district of such agency; or

*(ii) resided on Federal property with a parent who is an official of, and accredited by, a foreign government and is a foreign military officer;

*(B) resided on Federal property and had a parent on active duty in the uniformed services (as defined in section 101 of title 37, United States Code);

*(C) resided on Indian lands;

*(D)(i) had a parent on active duty in the uniformed services (as defined by sec on 101 of title 37, United States Code) but did not reside on Federal property; or

*(ii) had a parent who is an official of, and has been accredited by, a foreign government and is a foreign military officer but did not reside on Federal property;

*(E) resided in low-rent housing;

*(F) resided on Federal property and is not described in subparagraph (A) or (B); or

*(G) resided with a parent employed on Federal property situated—

*(i) in whole or in part in the county in which such agency is located, or in whole or in part in such agency if such agency is located in more than one county; or

*(ii) if not in such county, in whole or in part in the same State as such agency.

*(2) **DETERMINATION OF WEIGHTED STUDENT UNITS.**—For the purpose of computing the basic support payment under subsection (b), the Secretary shall calculate the total number of weighted student units for a local educational agency by adding together the results obtained by the following computations:

*(A) Multiply the number of children described in subparagraphs (A) and (B) of paragraph (1) by a factor of 1.0.

*(B) Multiply the number of children described in paragraph (1)(C) by a factor of 1.25.

*(C) Multiply the number of children described in subparagraphs (A) and (B) of paragraph (1) by a factor of .85 if the local educational agency has—

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"(i) a number of such children described in such subparagraphs which exceeds 6,500; and

"(ii) an average daily attendance for all children which exceeds 100,000.

"(D) Multiply the number of children described in subparagraphs (D) and (E) of paragraph (1) by a factor of .10.

"(E) Multiply the number of children described in subparagraphs (F) and (G) of paragraph (1) by a factor of .05.

"(3) SPECIAL RULE.—The Secretary shall only compute a payment for a local educational agency for children described in subparagraph (F) or (G) of paragraph (1) if the number of such children equals or exceeds 2,000 and such number equals or exceeds 15 percent of the total number of students in average daily attendance in the schools of such agency.

"(b) BASIC SUPPORT PAYMENTS AND PAYMENTS WITH RESPECT TO FISCAL YEARS IN WHICH INSUFFICIENT FUNDS ARE APPROPRIATED.—

"(1) BASIC SUPPORT PAYMENTS.—

"(A) IN GENERAL.—From the amount appropriated under section 8014(b) for a fiscal year, the Secretary is authorized to make basic support payments to eligible local educational agencies with children described in subsection (a).

"(B) ELIGIBILITY.—A local educational agency is eligible to receive a basic support payment under subparagraph (A) for a fiscal year with respect to a number of children determined under subsection (a)(1) only if the number of children so determined with respect to such agency amounts to the lesser of—

"(i) at least 400 such children; or

"(ii) a number of such children which equals at least 3 percent of the total number of children who were in average daily attendance, during such year, at the schools of such agency and for whom such agency provided free public education.

"(C) MAXIMUM AMOUNT.—The maximum amount that a local educational agency is eligible to receive under this subsection for any fiscal year is the sum of the total weighted student units, as computed under subsection (a)(2), multiplied by the greater of—

"(i) one-half of the average per-pupil expenditure of the State in which the local educational agency is located for the third fiscal year preceding the fiscal year for which the determination is made;

"(ii) one-half of the average per-pupil expenditure of all of the States for the third fiscal year preceding the fiscal year for which the determination is made;

"(iii) the comparable local contribution rate certified by the State, as determined under regulations prescribed to carry out the Act of September 30, 1950 (Public Law 874, 81st Congress), as such regulations were in effect on January 1, 1994; or

"(iv) the average per-pupil expenditure of the State in which the local educational agency is located, multiplied by the local contribution percentage.

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"(2) PAYMENTS WITH RESPECT TO FISCAL YEARS IN WHICH INSUFFICIENT FUNDS ARE APPROPRIATED.—

"(A) IN GENERAL.—For any fiscal year in which the sums appropriated under section 8014(b) are insufficient to pay to each local educational agency the full amount computed under paragraph (1), the Secretary shall make payments in accordance with this paragraph.

"(B) LEARNING OPPORTUNITY THRESHOLD PAYMENTS.—

(i) For fiscal years described in subparagraph (A), the Secretary shall compute a learning opportunity threshold payment (hereafter in this title referred to as the 'threshold payment') by multiplying the amount obtained under paragraph (1)(C) by the total percentage obtained by adding—

"(I) the percentage of federally connected children for each local educational agency determined by calculating the fraction, the numerator of which is the total number of children described under subsection (a)(1) and the denominator of which is the total number of children in average daily attendance at the schools served by such agency; and

"(II) the percentage that funds under paragraph (1)(C) represent of the total budget of the local educational agency, determined by calculating the fraction, the numerator of which is the total amount of funds calculated for each local educational agency under this paragraph (not including amounts received under subsection (f)), and the denominator of which is the total current expenditures for such agency in the second preceding fiscal year for which the determination is made.

"(ii) Such total percentage used to calculate threshold payments under paragraph (1) shall not exceed 100.

"(iii) For the purpose of determining the percentages described in subclauses (I) and (II) of clause (i) that are applicable to the local educational agency providing free public education to students in grades 9 through 12 residing on Hanscom Air Force Base, Massachusetts, the Secretary shall consider only that portion of such agency's total enrollment of students in grades 9 through 12 when calculating the percentage under such subclause (I) and only that portion of the total current expenditures attributed to the operation of grades 9 through 12 in such agency when calculating the percentage under subclause (II).

"(C) RATABLE DISTRIBUTION.—For fiscal years described in subparagraph (A), the Secretary shall make payments as a ratable distribution based upon the computation made under subparagraph (B).

"(c) PRIOR YEAR DATA.—

"(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (f), all calculations under this section shall be based on data for each local educational agency from not later than the fiscal year preceding the fiscal year for which the agency is making application for payment.

"(2) EXCEPTION.—Calculations for a local educational agency that is newly established by a State shall, for the first year of operation of such agency, be based on data from

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the fiscal year for which the agency is making application for payment.

"(d) CHILDREN WITH DISABILITIES.—

"(1) IN GENERAL.—From the amount appropriated under section 8014(c) for a fiscal year, the Secretary shall pay to each eligible local educational agency, on a pro rata basis, the amounts determined by—

"(A) multiplying the number of children described in subparagraphs (A)(ii), (B) and (C) of subsection (a)(1) who are eligible to receive services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) by a factor of 1.0; and

"(B) multiplying the number of children described in subparagraph (D) of subsection (a)(1) who are eligible to receive services under such Act by a factor of 0.5.

"(2) USE OF FUNDS.—A local educational agency that receives funds under paragraph (1) shall use such funds to provide a free appropriate public education to children described in paragraph (1) in accordance with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

"(e) HOLD-HARMLESS AMOUNTS.—

"(1) IN GENERAL.—(A) Except as provided in paragraph (4)(A), the total amount that the Secretary shall pay a local educational agency under subsection (b) shall not be less than 85 percent of the amount such agency received for the preceding fiscal year—

"(i) in the case of fiscal year 1995 only, under subsections (a) and (b) of section 3 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994); or

"(ii) in the case of fiscal years 1996, 1997, 1998, or 1999, under such subsection (b).

"(B) For fiscal year 1995 only, the Secretary shall pay, to each local educational agency that is not eligible for a payment under subsection (b) but that received a payment under section 3 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) for fiscal year 1994, an amount which is not less than 65 percent of the payment such agency received under such section 3 for fiscal year 1994.

"(2) TWO-YEAR APPLICABILITY.—Paragraph (1)(A) shall apply to any one local educational agency for a maximum of two consecutive fiscal years.

"(3) PHASE-OUT PAYMENT.—A local educational agency which received a payment under section 3(e) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) for fiscal year 1994 is eligible to receive a payment, under subsection (b) for fiscal year 1995, in an amount which is not less than 85 percent of the amount received by such agency in fiscal year 1994 under such section 3(e).

"(4) RATABLY REDUCTIONS.—(A)(i) If necessary in order to make payments to local educational agencies in accordance with paragraphs (1) and (2), the Secretary first shall ratably

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reduce payments under subsection (b) to local educational agencies that do not receive a payment under this subsection.

"(ii) If additional funds become available for making payments under subsection (b) for such fiscal year, payments that were reduced under clause (i) shall be increased on the same basis as such payments were reduced.

"(B)(i) If the sums made available under this title for any fiscal year are insufficient to pay the full amounts that all local educational agencies in all States are eligible to receive under paragraphs (1) and (2) after the application of subparagraph (A) for such year, the Secretary shall ratably reduce payments to all such agencies for such year.

"(ii) If additional funds become available for making payments under paragraphs (1) and (2) for such fiscal year, payments that were reduced under clause (i) shall be increased on the same basis as such payments were reduced.

"(F) ADDITIONAL ASSISTANCE FOR HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES.—

"(1) RESERVATION.—From amounts appropriated under section 8014(b) for a fiscal year, the Secretary shall provide additional assistance to meet special circumstances relating to the provision of education in local educational agencies eligible to receive assistance under this section.

"(2) ELIGIBILITY.—(A) A local educational agency is eligible to receive additional assistance under this subsection only if such agency—

"(i)(I) has an enrollment of federally connected children described in subsection (a)(1) which constitutes a percentage of the total student enrollment of such agency which is not less than 50 percent if such agency receives a payment on behalf of children described in subparagraphs (F) and (G) of such subsection, or not less than 40 percent if such agency does not receive a payment on behalf of such children; and

"(II) has a tax rate for general fund purposes which is at least 95 percent of the average tax rate for general fund purposes of comparable local educational agencies in the State;

"(ii)(I) has an enrollment of federally connected children described in subsection (a)(1) which constitutes at least 85 percent of the total student enrollment of such agency; and

"(II) has a tax rate for general fund purposes which is at least 125 percent of the average tax rate for general fund purposes of comparable local educational agencies in the State; or

"(iii) is a local educational agency whose boundaries are the same as a Federal military installation.

"(B) If the current expenditures in those local educational agencies which the Secretary has determined to be generally comparable to the local educational agency for which a computation is made under subsection (b)(1)(C) are not reasonably comparable because of unusual geographical factors which affect the current expenditures necessary to maintain, in such agency, a level of education equivalent to that maintained in such other agencies, then the Secretary shall increase the local contribution rate for such agency by such an amount

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which the Secretary determines will compensate such agency for the increase in current expenditures necessitated by such unusual geographical factors. The amount of any such supplementary payment may not exceed the per-pupil share (computed with regard to all children in average daily attendance), as determined by the Secretary, of the increased current expenditures necessitated by such unusual geographic factors.

"(C) Any local educational agency determined eligible under clause (iii) of subparagraph (A) shall be deemed to have met the tax effort requirements for eligibility under clause (I)(II) or (II)(II) of such subparagraph.

"(3) MAXIMUM PAYMENTS.—

"(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall determine the maximum amount that a local educational agency may receive under this subsection in accordance with the following computations:

"(i) The Secretary shall first determine the greater of—

"(I) the average per-pupil expenditure of the State in which the local educational agency is located or the average per-pupil expenditure of all the States;

"(II) the average per-pupil expenditure of generally comparable local educational agencies located in the State of the local educational agency, as defined in regulations issued by the Secretary; or

"(III) the average per-pupil expenditure of three generally comparable local educational agencies located in the State of the local educational agency, as defined in regulations issued by the Secretary.

"(ii) The Secretary shall next subtract from the amount determined under clause (i) the average amount of State aid per pupil received by the local educational agency.

"(iii) The Secretary shall next multiply the amount determined under clause (ii) by the total number of students in average daily attendance at the schools of the local educational agency as determined by the Secretary under subsection (a)(1).

"(iv) If the tax rate used by the local educational agency is greater than 95 percent, but less than 100 percent, of the tax rate of comparable local educational agencies, the Secretary shall next multiply the amount determined under clause (iii) by the percentage that the tax rate of the local educational agency is of—

"(I) the average tax rate of its generally comparable local educational agencies; or

"(II) the average tax rate of all the local educational agencies in the State in which the local educational agency is located.

"(v) The Secretary shall next subtract the total amount of payments received by a local educational agency under subsections (b) and (d) for a fiscal year from the amount determined under clause (iii) or clause (iv), as the case may be.

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"(B) SPECIAL RULE.—With respect to payments under this subsection for a local educational agency described in clause (ii) or (iii) of paragraph (2)(A), the maximum amount of such payments shall be computed by taking the product of the average per-pupil expenditure in all States multiplied by 0.7, except that such amount may not exceed 125 percent of the average per-pupil expenditure in all local educational agencies in the State.

"(4) CURRENT YEAR DATA.—The Secretary shall, for purposes of providing assistance under this subsection, use—

"(A) student and revenue data from the fiscal year for which the local educational agency is applying for assistance under this subsection; and

"(B) the most recent data available which is adjusted to such fiscal year.

"(5) REDUCTION IN PAYMENTS.—If funds appropriated to carry out this subsection are insufficient to pay in full the amounts determined under paragraph (3), the Secretary shall ratably reduce the payment to each eligible local educational agency.

"(g) ADDITIONAL PAYMENTS FOR LOCAL EDUCATIONAL AGENCIES WITH HIGH CONCENTRATIONS OF CHILDREN WITH SEVERE DISABILITIES.—

"(1) IN GENERAL.—If any local educational agency receives Federal funds from sources other than this title to carry out the purposes of this title for any fiscal year due to the enrollment of children described under subsection (a), then the Secretary shall consider such funds as a payment to such agency under this part for such fiscal year.

"(2) SPECIAL RULE.—Notwithstanding any other provision of law, if funds appropriated pursuant to section 8014(b) for payments under subsection (b) to such agency for a fiscal year which, when added to the funds described in paragraph (1) received by such agency for such fiscal year, exceed the maximum amount described under subsection (b)(1)(C), then the Secretary shall make available from the funds appropriated under section 8014(b) for such fiscal year such excess amounts to any local educational agency serving two or more children described under subparagraph (B) or (D) of subsection (a)(1) who have a severe disability and a parent serving in the uniformed services (as defined by section 101 of title 37, United States Code) who is assigned to a particular permanent duty station for compassionate reasons (compassionate post assignment) for the total costs associated with such children who are provided an educational program provided outside the schools of such agency.

"(3) REMAINING FUNDS.—If funds remain after payments are made under paragraph (2) for any fiscal year, then such remaining funds shall be made available for expenditures under subsection (d) in such fiscal year on a pro rata basis consistent with the requirements of such subsection.

"(4) RATABLE REDUCTIONS.—If amounts available to carry out paragraph (2) for any fiscal year are insufficient to pay in full the total payment that all eligible local educational agencies are eligible to receive under such paragraph for such year, then the Secretary shall ratably reduce such payments to such agencies for such year.

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"(f) OTHER FUNDS.—Notwithstanding any other provision of law, a local educational agency receiving funds under this section may also receive funds under section 6 of the Act of September 30, 1950 (Public Law 574, 61st Congress) (as such section was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) or such section's successor authority.

"(i) MAINTENANCE OF EFFORT.—A local educational agency may receive funds under sections 8002 and 8003(b) for any fiscal year only if the State educational agency finds that either the combined fiscal effort per student or the aggregate expenditures of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

"SEC. 8004. POLICIES AND PROCEDURES RELATING TO CHILDREN RESIDING ON INDIAN LANDS.

"(a) IN GENERAL.—A local educational agency that claims children residing on Indian lands for the purpose of receiving funds under section 8003 shall establish policies and procedures to ensure that—

"(1) such children participate in programs and activities supported by such funds on an equal basis with all other children;

"(2) parents of such children and Indian tribes are afforded an opportunity to present their views on such programs and activities, including an opportunity to make recommendations on the needs of those children and how the local educational agency may help such children realize the benefits of such programs and activities;

"(3) parents and Indian tribes are consulted and involved in planning and developing such programs and activities;

"(4) relevant applications, evaluations, and program plans are disseminated to the parents and Indian tribes; and

"(5) parents and Indian tribes are afforded an opportunity to present their views to such agency regarding such agency's general educational program.

"(b) RECORDS.—A local educational agency that claims children residing on Indian lands for the purpose of receiving funds under section 8003 shall maintain records demonstrating such agency's compliance with the requirements contained in subsection (a).

"(c) WAIVER.—A local educational agency that claims children residing on Indian lands for the purpose of receiving funds under section 8003 shall not be required to comply with the requirements of subsections (a) and (b) for any fiscal year with respect to any Indian tribe from which such agency has received a written statement that the agency need not comply with those subsections because the tribe is satisfied with the provision of educational services by such agency to such children.

"(d) TECHNICAL ASSISTANCE AND ENFORCEMENT.—The Secretary shall—

"(1) provide technical assistance to local educational agencies, parents, and Indian tribes to enable such agencies, parents, and tribes to carry out this section; and

"(2) enforce this section through such actions, which may include the withholding of funds, as the Secretary determines

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8004(d)

to be appropriate, after affording the affected local educational agency, parents, and Indian tribe an opportunity to present their views.

"(e) COMPLAINTS.—

"(1) IN GENERAL.—(A) Any tribe, or its designee, which has students in attendance at a local educational agency may, in its discretion and without regard to the requirements of any other provision of law, file a written complaint with the Secretary regarding any action of a local educational agency taken pursuant to, or relevant to, the requirements of this section.

"(B) Within ten working days from receipt of a complaint, the Secretary shall—

"(i) designate a time and place for a hearing into the matters relating to the complaint at a location in close proximity to the local educational agency involved, or if the Secretary determines there is good cause, at some other location convenient to both the tribe, or its designee, and the local educational agency;

"(ii) designate a hearing examiner to conduct the hearing; and

"(iii) notify the affected tribe or tribes and the local educational agency involved of the time, place, and nature of the hearing and send copies of the complaint to the local educational agency and the affected tribe or tribes.

"(2) HEARING.—The hearing shall be held within 30 days of the designation of a hearing examiner and shall be open to the public. A record of the proceedings shall be established and maintained.

"(3) EVIDENCE; RECOMMENDATIONS; COST.—The complaining tribe, or its designee, and the local educational agency shall be entitled to present evidence on matters relevant to the complaint and to make recommendations concerning the appropriate remedial actions. Each party to the hearing shall bear only its own costs in the proceedings.

"(4) FINDINGS AND RECOMMENDATIONS.—Within 30 days of the completion of the hearing, the hearing examiner shall, on the basis of the record, make written findings of fact and recommendations concerning appropriate remedial action, if any, which should be taken. The hearing examiner's findings and recommendations, along with the hearing record, shall be forwarded to the Secretary.

"(5) WRITTEN DETERMINATION.—Within 30 days of the Secretary's receipt of the findings, recommendations, and record, the Secretary shall, on the basis of the record, make a written determination of the appropriate remedial action, if any, to be taken by the local educational agency, the schedule for completion of the remedial action, and the reasons for the Secretary's decision.

"(6) COPIES PROVIDED.—Upon completion of the Secretary's final determination, the Secretary shall provide the complaining tribe, or its designee, and the local educational agency with copies of the hearing record, the hearing examiner's findings and recommendations, and the Secretary's final determination. The final determination of the Secretary shall be subject to judicial review.

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"(7) CONSOLIDATION.—In all actions under this subsection, the Secretary shall have discretion to consolidate complaints involving the same tribe or local educational agency.

"(8) WITHHOLDING.—If the local educational agency rejects the determination of the Secretary, or if the remedy required is not undertaken within the time established and the Secretary determines that an extension of the time established will not effectively encourage the remedy required, the Secretary shall withhold payment of all moneys to which such local agency is eligible under section 8003 until such time as the remedy required is undertaken, except where the complaining tribe or its designee formally requests that such funds be released to the local educational agency, except that the Secretary may not withhold such moneys during the course of the school year if the Secretary determines that such withholding would substantially disrupt the educational programs of the local educational agency.

"(9) REJECTION OF DETERMINATION.—If the local educational agency rejects the determination of the Secretary and a tribe exercises the option under section 1101(d) of the Education Amendments of 1978, to have education services provided either directly by the Bureau of Indian Affairs or by contract with the Bureau of Indian Affairs, any Indian students affiliated with that tribe who wish to remain in attendance at the local educational agency against whom the complaint which led to the tribal action under such subsection (d) was lodged may be counted with respect to that local educational agency for the purpose of receiving funds under section 8003. In such event, funds under such section shall not be withheld pursuant to paragraph (8) and no further complaints with respect to such students may be filed under paragraph (1).

"(f) CONSTRUCTION.—This section is based upon the special relationship between the Indian nations and the United States and nothing in this section shall be construed to relieve any State of any duty with respect to any citizens of that State.

"SEC. 8005. APPLICATION FOR PAYMENTS UNDER SECTIONS 8002 AND 8003.

"(a) IN GENERAL.—A local educational agency desiring to receive a payment under section 8002 or 8003 shall—

"(1) submit an application for such payment to the Secretary; and

"(2) provide a copy of such application to the State educational agency.

"(b) CONTENTS.—Each such application shall be submitted in such form and manner, and shall contain such information, as the Secretary may require, including—

"(1) information to determine the eligibility of the local educational agency for a payment and the amount of such payment; and

"(2) where applicable, an assurance that such agency is in compliance with section 8004 (relating to children residing on Indian lands).

"(c) DEADLINE FOR SUBMISSION.—The Secretary shall establish deadlines for the submission of applications under this section.

"(d) APPROVAL.—

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8005(d)

"(1) IN GENERAL.—The Secretary shall approve an application submitted under this section that—

"(A) except as provided in paragraph (2), is filed by the deadline established under subsection (c); and

"(B) otherwise meets the requirements of this title.

"(2) REDUCTION IN PAYMENT.—The Secretary shall approve an application filed not more than 60 days after a deadline established under subsection (c) that otherwise meets the requirements of this title, except that, notwithstanding section 8003(e), the Secretary shall reduce the payment based on such late application by 10 percent of the amount that would otherwise be paid.

"(3) LATE APPLICATIONS.—The Secretary shall not accept or approve any application that is filed more than 60 days after a deadline established under subsection (c).

"(4) STATE APPLICATION AUTHORITY.—Notwithstanding any other provision of law, a State educational agency that had been accepted as an applicant for funds under section 3 of the Act of September 20, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) in fiscal year 1994 shall be permitted to continue as an applicant under the same conditions by which such agency made application during such fiscal year only if such State educational agency distributes all funds received for the students for which application is being made by such State educational agency to the local educational agencies providing educational services to such students.

***SEC. 8006. PAYMENTS FOR SUDDEN AND SUBSTANTIAL INCREASES IN ATTENDANCE OF MILITARY DEPENDENTS.**

"(a) ELIGIBILITY.—A local educational agency is eligible for a payment under this section if—

"(1) the number of children in average daily attendance during the school year for which the determination is made is at least 10 percent or 100 more than the number of children in average daily attendance in the school year preceding the school year for which the determination is made; and

"(2) the number of children in average daily attendance with a parent on active duty (as defined in section 101(18) of title 37, United States Code) in the Armed Forces who are in attendance at such agency because of the assignment of their parent to a new duty station between May 15 and September 30, inclusive, of the fiscal year for which the determination is made, as certified by an appropriate local official of the Department of Defense, is at least 10 percent or 100 more than the number of children in average daily attendance in the preceding school year.

"(b) APPLICATION.—A local educational agency that wishes to receive a payment under this section shall file an application with the Secretary by October 15 of the school year for which payment is requested, in such manner and containing such information as the Secretary may prescribe, including information demonstrating that such agency is eligible for such a payment.

"(c) CHILDREN TO BE COUNTED.—For each eligible local educational agency that applies for a payment under this section, the Secretary shall determine the lesser of—

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8006(c)

"(1) the increase in the number of children in average daily attendance from the school year preceding the fiscal year for which the determination is made; and

"(2) the number of children described in subsection (a)(2).

"(d) PAYMENTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), from the amount appropriated for a fiscal year under section 8014(d), the Secretary shall pay each local educational agency with an approved application an amount equal to one-half of the national average per-pupil expenditure multiplied by the number of such children determined under subsection (c) for that local educational agency.

"(2) RATABLE REDUCTION.—(A) If the amount appropriated to carry out this section for any fiscal year is insufficient to pay the full payment that all eligible local educational agencies are eligible to receive under this section for such year, then the Secretary shall ratably reduce the payments to such agencies for such year.

"(B) If additional funds become available for making payments under paragraph (1) for such fiscal year, payments that were reduced under subparagraph (A) shall be increased on the same basis as such payments were reduced.

"(e) NOTIFICATION PROCESS.—

"(1) ESTABLISHMENT.—The Secretary shall establish, with the Secretary of Defense, a notification process relating to the closure of Department of Defense facilities, or the adjustment of personnel levels assigned to such facilities, which may substantially affect the student enrollment levels of local educational agencies which receive or may receive payments under this title.

"(2) INFORMATION.—Such process shall provide timely information regarding such closures and such adjustments—

"(A) by the Secretary of Defense to the Secretary; and

"(B) by the Secretary to the affected local educational agencies.

"SEC. 8007. CONSTRUCTION.

"(a) PAYMENTS AUTHORIZED.—From the amount appropriated for each fiscal year under section 8014(e), the Secretary shall make payments to each local educational agency—

"(1) that receives a basic payment under section 8003(b);

and

"(2)(A) in which the number of children determined under section 8003(a)(1)(C) constituted at least 50 percent of the number of children who were in average daily attendance in the schools of such agency during the preceding school year;

"(B) in which the number of children determined under subparagraphs (B) and (D)(i) of section 8003(a)(1) constituted at least 50 percent of the number of children who were in average daily attendance in the schools of such agency during the school year preceding the school year for which the determination is made and in which the agency at any 2 times during the four fiscal years preceding the date of enactment of the Improving America's Schools Act of 1994 was denied by a vote of the agency's eligible voters a bond referendum for the purposes of school construction or renovation;

"(C) that receives assistance under section 8003(f); or

8006(a)(1) -
8007(a)(2)(C)

"(D) that receives assistance under section 8006.

"(b) AMOUNT OF PAYMENTS.—The amount of a payment to each such agency for a fiscal year shall be equal to—

"(1) the amount appropriated under section 8014(e) for such year; divided by

"(2) the number of children determined under section 8003(a)(2) for all local educational agencies described in subsection (a), but not including any children attending a school assisted or provided by the Secretary under section 8008 or section 10 of the Act of September 23, 1950 (Public Law 815, 81st Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994); multiplied by

"(3) the number of such children determined for such agency.

"(c) USE OF FUNDS.—Any local educational agency that receives funds under this section shall use such funds for construction, as defined in section 8013(3).

"SEC. 8008. FACILITIES.

"(a) CURRENT FACILITIES.—From the amount appropriated for any fiscal year under section 8014(f), the Secretary may continue to provide assistance for school facilities that were supported by the Secretary under section 10 of the Act of September 23, 1950 (Public Law 815, 81st Congress) (as such Act was in effect on the day preceding the date of the enactment of the Improving America's Schools Act of 1994).

"(b) TRANSFER OF FACILITIES.—

"(1) IN GENERAL.—The Secretary shall, as soon as practicable, transfer to the appropriate local educational agency or another appropriate entity all the right, title, and interest of the United States in and to each facility provided under section 10 of the Act of September 23, 1950 (Public Law 815, 81st Congress), or under section 204 or 310 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Acts were in effect on January 1, 1958).

"(2) OTHER REQUIREMENTS.—Any such transfer shall be without charge to such agency or entity, and prior to such transfer, the transfer shall be consented to by the local educational agency or other appropriate entity, and may be made on such terms and conditions as the Secretary deems appropriate to carry out the purposes of this title.

"SEC. 8009. STATE CONSIDERATION OF PAYMENTS IN PROVIDING STATE AID.

"(a) GENERAL PROHIBITION.—Except as provided in subsection (b), a State may not—

"(1) consider payments under this title or under the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) in determining for any fiscal year—

"(A) the eligibility of a local educational agency for State aid for free public education; or

"(B) the amount of such aid; or

"(2) make such aid available to local educational agencies in a manner that results in less State aid to any local edu-

8007(a)(2)(D) -
8009(a)

educational agency that is eligible for such payment than such agency would receive if such agency were not so eligible.

"(b) STATE EQUALIZATION PLANS.—

"(1) IN GENERAL.—A State may reduce State aid to a local educational agency that receives a payment under section 8002 or 8003(b) (except the amount calculated in excess of 1.) under subparagraph (B) of section 8003(a)(2)) or under the Act of September 30, 1950 (Public Law 874, 81st Congress) as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994 (other than an increase in payments described in paragraphs (2)(B), (2)(C), (2)(D), or (3)(B)(ii) of section 8(d) of such Act of September 30, 1950) for any fiscal year if the Secretary determines, and certifies under subsection (c)(3)(A), that such State has in effect a program of State aid that equalizes expenditures for free public education among local educational agencies in such State.

"(2) COMPUTATION.—

"(A) IN GENERAL.—For purposes of paragraph (1), a program of State aid equalizes expenditures among local educational agencies if, in the second fiscal year preceding the fiscal year for which the determination is made, the amount of per-pupil expenditures made by, or per-pupil revenues available to, the local educational agency in the State with the highest such per-pupil expenditures or revenues did not exceed the amount of such per-pupil expenditures made by, or per-pupil revenues available to, the local educational agency in the State with the lowest such expenditures or revenues by more than—

change to disparity requirement

- "(i) 25 percent for fiscal year 1995, 1996, or 1997; and
- "(ii) 20 percent for fiscal year 1998 or 1999.

"(B) OTHER FACTORS.—In making a determination under this subsection, the Secretary shall—

"(i) disregard local educational agencies with per-pupil expenditures or revenues above the 95th percentile or below the 5th percentile of such expenditures or revenues in the State; and

"(ii) take into account the extent to which a program of State aid reflects the additional cost of providing free public education in particular types of local educational agencies, such as those that are geographically isolated, or to particular types of students, such as children with disabilities.

~~"(3) Except withstanding paragraph (2), if the Secretary determines that the State has substantially revised its program of State aid, the Secretary may certify such program for any fiscal year only if—~~

~~"(A) the Secretary determines, on the basis of projected data, that the State's program will meet the disparity standard described in paragraph (2) for the fiscal year for which the determination is made; and~~

~~"(B) the State provides an assurance to the Secretary that, if final data do not demonstrate that the State's program met such standard for the fiscal year for which the determination is made, the State will pay to each~~

affected local educational agency that amount by which the State reduces State aid to the local educational agency.
(c) PROCEDURES FOR REVIEW OF STATE EQUALIZATION PLANS.—

(1) WRITTEN NOTICE.—

(A) IN GENERAL.—A State that wishes to consider providing State aid to any local educational agency shall submit to the Secretary, not later than 120 days before the beginning of the fiscal year, a written notice of such State's intention to consider such program providing State aid.

(B) CONTENTS.—Such notice shall be in the form and contain the information the Secretary requires, including a description of the program and how such local educational agency is affected by such State's intention to consider such program providing State aid.

(2) OPPORTUNITY TO PRESENT VIEWS.—Before making a determination under subsection (b), the Secretary shall afford the State, and local educational agencies in the State, an opportunity to present their views.

(3) QUALIFICATION PROCEDURES.—If the Secretary determines that a program of State aid qualifies under subsection (b), the Secretary shall—

(A) certify the program and so notify the State; and

(B) afford an opportunity for a hearing, in accordance with section 8011(a), to any local educational agency adversely affected by such certification.

(4) NON-QUALIFICATION PROCEDURES.—If the Secretary determines that a program of State aid does not qualify under subsection (b), the Secretary shall—

(A) so notify the State; and

(B) afford an opportunity for a hearing, in accordance with section 8011(a), to the State, and to any local educational agency adversely affected by such determination.

(d) TREATMENT OF STATE AID.—

(1) IN GENERAL.—If a State has in effect a program of State aid for free public education for any fiscal year, which is designed to equalize expenditures for free public education among the local educational agencies of that State, payments under this title or under the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) for any fiscal year may be taken into consideration by such State in determining the relative—

(A) financial resources available to local educational agencies in that State; and

(B) financial need of such agencies for the provision of free public education for children served by such agency, except that a State may consider as local resources funds received under this title or under the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) only in proportion to the share that local tax revenues covered under a State equalization program are of total local tax revenues.

(2) PROHIBITION.—A State may not take into consideration payments under this title or under the Act of September 30,

8009(c) -
(d)

1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) before such State's program of State aid has been certified by the Secretary under subsection (c)(3).

“(e) REMEDIES FOR STATE VIOLATIONS.—

“(1) IN GENERAL.—The Secretary or any aggrieved local educational agency may, not earlier than 150 days after an adverse determination by the Secretary against a State for violation of subsections (a) or (d)(2) or for failure to carry out an assurance under subsection (b)(3)(B), and if an administrative proceeding has not been concluded within such time, bring an action in a United States district court against such State for such violations or failure.

“(2) IMMUNITY.—A State shall not be immune under the 11th amendment to the Constitution of the United States from an action described in paragraph (1).

“(3) RELIEF.—The court shall grant such relief as the court determines is appropriate.

“SEC. 8010. FEDERAL ADMINISTRATION.

“(a) PAYMENTS IN WHOLE DOLLAR AMOUNTS.—The Secretary shall round any payments under this title to the nearest whole dollar amount.

“(b) OTHER AGENCIES.—Each Federal agency administering Federal property on which children reside, and each agency principally responsible for an activity that may occasion assistance under this title, shall, to the maximum extent practicable, comply with requests of the Secretary for information the Secretary may require to carry out this title.

“(c) SPECIAL RULES.—

“(1) CERTAIN CHILDREN ELIGIBLE UNDER SUBSECTION (a) OR (b) OF SECTION 3 OF PUBLIC LAW 81-874.—Notwithstanding any other provision of law, for any fiscal year before fiscal year 1995, the Secretary shall treat as eligible under subsection (a) or (b) of section 3 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such subsection was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994), and shall forgive the obligation of a local educational agency to repay any amounts that such agency received under such section for such fiscal year based on, any child who would be eligible under such subsections except that such child does not meet the requirements of subsection (a)(1)(B) or (b)(2)(B), respectively, of such section 3, if such child meets the requirements of paragraph (3) of this subsection.

“(2) CERTAIN CHILDREN ELIGIBLE UNDER SUBPARAGRAPHS (A) AND (G)(ii) OF SECTION 8003(a)(1).—(A) The Secretary shall treat as eligible under subparagraph (A) of section 8003(a)(1) any child who would be eligible under such subparagraph except that the Federal property on which the child resides or on which the child's parent is employed is not in the same State in which the child attends school, if such child meets the requirements of paragraph (3) of this subsection.

“(B) The Secretary shall treat as eligible under subparagraph (G) of section 8003(a)(1) any child who would be eligible under such subparagraph except that such child does not meet

8009(e) -
8010(c)(2)

the requirements of clause (ii) of such subparagraph, if such child meets the requirements of paragraph (3) of this subsection.

"(3) REQUIREMENTS.—A child meets the requirements of this paragraph if—

"(A) such child resides—

"(i) in a State adjacent to the State in which the local educational agency serving the school such child attends is located; or

"(ii) with a parent employed on Federal property in a State adjacent to the State in which such agency is located;

"(B) the schools of such agency are within a more reasonable commuting distance of such child's home than the schools of the local educational agency that serves the school attendance area where such child resides;

"(C) attending the schools of the local educational agency that serves the school attendance area where such child resides will impose a substantial hardship on such child;

"(D) the State in which such child attends school provides funds for the education of such child on the same basis as all other public school children in the State, unless otherwise permitted under section 5(d)(2) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) or section 8009(b) of this title; and

"(E) such agency received a payment for fiscal year 1994 under section 8003(b) (or such section's predecessor authority) on behalf of children described in paragraph (2).

***SEC. 8011. ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW.**

"(a) ADMINISTRATIVE HEARINGS.—A local educational agency and a State that is adversely affected by any action of the Secretary under this title or under the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) shall be entitled to a hearing on such action in the same manner as if such agency were a person under chapter 5 of title 5, United States Code.

"(b) JUDICIAL REVIEW OF SECRETARIAL ACTION.—

"(1) IN GENERAL.—A local educational agency or a State aggrieved by the Secretary's final decision following an agency proceeding under subsection (a) may, within 60 days after receiving notice of such decision, file with the United States court of appeals for the circuit in which such agency or State is located a petition for review of that action. The clerk of the court shall promptly transmit a copy of the petition to the Secretary. The Secretary shall then file in the court the record of the proceedings on which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

"(2) FINDINGS OF FACT.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case

8010(c)(2) -

8011(b)(2)

to the Secretary to take further evidence. The Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(8) REVIEW.—The court shall have exclusive jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"SEC. 8012. FORGIVENESS OF OVERPAYMENTS.

"Notwithstanding any other provision of law, the Secretary may forgive the obligation of a local educational agency to repay, in whole or in part, the amount of any overpayment received under this title, or under the Act of September 30, 1950 (Public Law 874, 81st Congress) or the Act of September 23, 1950 (Public Law 815, 81st Congress) (as such Acts were in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994), if the Secretary determines that the overpayment was made as a result of an error made by—

"(1) the Secretary; or

"(2) the local educational agency and repayment of the full amount of the overpayment will result in an undue financial hardship on the agency and seriously harm the agency's educational program.

"SEC. 3012. DEFINITIONS.

"For purposes of this title:

"(1) ARMED FORCES.—The term 'Armed Forces' means the Army, Navy, Air Force, and Marine Corps.

"(2) AVERAGE PER-PUPIL EXPENDITURE.—The term 'average per-pupil expenditure' means—

"(A) the aggregate current expenditures of all local educational agencies in the State; divided by

"(B) the total number of children in average daily attendance for whom such agencies provided free public education.

"(3) CONSTRUCTION.—The term 'construction' means—

"(A) the preparation of drawings and specifications for school facilities;

"(B) erecting, building, acquiring, altering, remodeling, repairing, or extending school facilities;

"(C) inspecting and supervising the construction of school facilities; and

"(D) debt service for such activities.

"(4) CURRENT EXPENDITURES.—The term 'current expenditures' means expenditures for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but does not include expenditures for community services, capital outlay, and debt service, or any expenditures made from funds awarded under part A of title I and title VI. The determination of whether an expenditure for the replacement of

9011(b)(3) -

9013(4)

equipment is considered a current expenditure or a capital outlay shall be determined in accordance with generally accepted accounting principles as determined by the State.

(6) FEDERAL PROPERTY.

(A) IN GENERAL.—Except as provided in subparagraphs (B) through (F), the term 'Federal property' means real property that is not subject to taxation by any State or any political subdivision of a State due to Federal agreement, law, or policy, and that is—

"(I) owned by the United States or leased by the United States from another entity;

"(II) held in trust by the United States for individual Indians or Indian tribes;

"(III) held by individual Indians or Indian tribes subject to restrictions on alienation imposed by the United States;

"(IV) conveyed at any time under the Alaska Native Claims Settlement Act to a Native individual, Native group, or village or regional corporation;

"(V) public land owned by the United States that is designated for the sole use and benefit of individual Indians or Indian tribes; or

"(VI) used for low-rent housing, as described in paragraph (10), that is located on land described in subclause (I), (II), (III), or (IV) of this clause on land that met one of those descriptions immediately before such property's use for such housing;

"(vii) part of a low-rent housing project assisted under the United States Housing Act of 1937; or

"(VIII) used to provide housing for homeless children at closed military installations pursuant to section 501 of the Stewart B. McKinney Homeless Assistance Act; or

"(ix) owned by a foreign government or by an international organization.

(B) SCHOOLS PROVIDING FLIGHT TRAINING TO MEMBERS OF AIR FORCE.—The term 'Federal property' includes, so long as not subject to taxation by any State or any political subdivision of a State, and whether or not that tax exemption is due to Federal agreement, law, or policy, any school providing flight training to members of the Air Force under contract with the Air Force at an airport owned by a State or political subdivision of a State.

(C) NON-FEDERAL EASEMENTS, LEASES, LICENSES, PERMITS, IMPROVEMENTS, AND CERTAIN OTHER REAL PROPERTY.—The term 'Federal property' includes, whether or not subject to taxation by a State or a political subdivision of a State—

"(i) any non-Federal easement, lease, license, permit, or other such interest in Federal property as otherwise described in this paragraph, but not including any non-Federal fee-simple interest;

"(ii) any improvement on Federal property as otherwise described in this paragraph; and

"(iii) real property that, immediately before its sale or transfer to a non-Federal party, was owned by the United States and otherwise qualified as Federal prop-

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(C)

erty described in this paragraph, but only for one year beyond the end of the fiscal year of such sale or transfer.

"(D) CERTAIN POSTAL SERVICE PROPERTY AND PIPELINES AND UTILITY LINES.—Notwithstanding any other provision of this paragraph, the term 'Federal property' does not include—

"(i) any real property under the jurisdiction of the United States Postal Service that is used primarily for the provision of postal services; or

"(ii) pipelines and utility lines.

"(E) PROPERTY WITH RESPECT TO WHICH STATE OR LOCAL TAX REVENUES MAY NOT BE EXPENDED, ALLOCATED, OR AVAILABLE FOR FREE PUBLIC EDUCATION.—Notwithstanding any other provision of this paragraph, 'Federal property' does not include any property on which children reside that is otherwise described in this paragraph if—

"(i) no tax revenues of the State or of any political subdivision of the State may be expended for the free public education of children who reside on that Federal property; or

"(ii) no tax revenues of the State are allocated or available for the free public education of such children.

"(F) PROPERTY LOCATED IN THE STATE OF OKLAHOMA OWNED BY INDIAN HOUSING AUTHORITY FOR LOW-INCOME HOUSING.—The term 'Federal property' includes any real property located in the State of Oklahoma that—

"(i) is owned by an Indian housing authority and used for low-income housing (including housing assisted under the mutual help ownership opportunity program under section 202 of the United States Housing Act of 1937); and

"(ii) at any time—

"(I) was designated by treaty as tribal land;

or

"(II) satisfied the definition of Federal property under section 403(1)(A) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994).

"(6) FREE PUBLIC EDUCATION.—The term 'free public education' means education that is provided—

"(A) at public expense, under public supervision and direction, and without tuition charge; and

"(B) as elementary or secondary education, as determined under State law, except that, notwithstanding State law, such term—

"(i) includes preschool education; and

"(ii) does not include any education provided beyond grade 12.

"(7) INDIAN LANDS.—The term 'Indian lands' means any Federal property described in paragraph (5)(A)(ii) or (5)(F).

"(8) LOCAL CONTRIBUTION PERCENTAGE.—

"(A) IN GENERAL.—The term 'local contribution percentage' means the percentage of current expenditures in the

State derived from local and intermediate sources, as reported to and verified by the National Center for Education Statistics.

"(B) HAWAII AND DISTRICT OF COLUMBIA.—Notwithstanding subparagraph (A), the local contribution percentage for Hawaii and for the District of Columbia shall be the average local contribution percentage for all States.

"(8) LOCAL EDUCATIONAL AGENCY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'local educational agency'—

"(i) means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent school district, or other school district; and

"(ii) includes any State agency that directly operates and maintains facilities for providing free public education.

"(B) EXCEPTION.—The term 'local educational agency' does not include any agency or school authority that the Secretary determines on a case-by-case basis—

"(i) was constituted or reconstituted primarily for the purpose of receiving assistance under this title or the Act of September 30, 1950 (Public Law 574, 81st Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) or increasing the amount of such assistance; or

"(ii) is not constituted or reconstituted for legitimate educational purposes.

"(10) LOW-RENT HOUSING.—The term 'low-rent housing' means housing located on property that is described in paragraph (5)(A)(iii).

"(11) REVENUE DERIVED FROM LOCAL SOURCES.—The term 'revenue derived from local sources' means—

"(A) revenue produced within the boundaries of a local educational agency and available to such agency for such agency's use; or

"(B) funds collected by another governmental unit, but distributed back to a local educational agency in the same proportion as such funds were collected as a local revenue source.

"(12) SCHOOL FACILITIES.—The term 'school facilities' includes—

"(A) classrooms and related facilities; and

"(B) equipment, machinery, and utilities necessary or appropriate for school purposes.

"SEC. 8014. AUTHORIZATION OF APPROPRIATIONS.

"(a) PAYMENTS FOR FEDERAL ACQUISITION OF REAL PROPERTY.—For the purpose of making payments under section 8002, there are authorized to be appropriated \$16,750,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

"(b) BASIC PAYMENTS; PAYMENTS FOR HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES.—For the purpose of making payments under subsections (b) and (f) of section 8003, there are authorized

8013(3)(d) -
8014(5)

to be appropriated \$775,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years, of which 6 percent shall be available, until expended, for each such fiscal year to carry out section 8003(f).

"(c) PAYMENTS FOR CHILDREN WITH DISABILITIES.—For the purpose of making payments under section 8003(d), there are authorized to be appropriated \$45,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

"(d) PAYMENTS FOR INCREASES IN MILITARY CHILDREN.—For the purpose of making payments under section 8006, there are authorized to be appropriated \$2,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

"(e) CONSTRUCTION.—For the purpose of carrying out section 8007, there are authorized to be appropriated \$25,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

"(f) FACILITIES MAINTENANCE.—For the purpose of carrying out section 8008, there are authorized to be appropriated \$2,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

TITLE IX—INDIAN, NATIVE HAWAIIAN, AND ALASKA NATIVE EDUCATION

PART A—INDIAN EDUCATION

SEC. 9101. FINDINGS.

The Congress finds that—

"(1) the Federal Government has a special responsibility to ensure that educational programs for all American Indian and Alaska Native children and adults—

"(A) are based on high-quality, internationally competitive content standards and student performance standards and build on Indian culture and the Indian community;

"(B) assist local educational agencies, Indian tribes, and other entities and individuals in providing Indian students the opportunity to achieve such standards; and

"(C) meet the special educational and culturally related academic needs of American Indian and Alaska Native students;

"(2) since the date of enactment of the Initial Indian Education Act in 1972, the level of involvement of Indian parents in the planning, development, and implementation of educational programs that affect such parents and their children has increased significantly, and schools should continue to foster such involvement;

"(3) although the number of Indian teachers, administrators, and university professors has increased since 1972, teacher training programs are not recruiting, training, or retraining a sufficient number of Indian individuals as educators to meet the needs of a growing Indian student population in elementary, secondary, vocational, adult, and higher education;

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(7)

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



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Department of Education
State of Alaska

to be appropriated \$775,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years, of which 6 percent shall be available, until expended, for each such fiscal year to carry out section 8003(f).

"(c) PAYMENTS FOR CHILDREN WITH DISABILITIES.—For the purpose of making payments under section 8003(d), there are authorized to be appropriated \$45,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

"(d) PAYMENTS FOR INCREASES IN MILITARY CHILDREN.—For the purpose of making payments under section 8006, there are authorized to be appropriated \$2,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

"(e) CONSTRUCTION.—For the purpose of carrying out section 8007, there are authorized to be appropriated \$25,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

"(f) FACILITIES MAINTENANCE.—For the purpose of carrying out section 8008, there are authorized to be appropriated \$2,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

TITLE IX—INDIAN, NATIVE HAWAIIAN, AND ALASKA NATIVE EDUCATION

"PART A—INDIAN EDUCATION

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"(2) since the date of enactment of the Initial Indian Education Act in 1972, the level of involvement of Indian parents in the planning, development, and implementation of educational programs that affect such parents and their children has increased significantly, and schools should continue to foster such involvement;

"(3) although the number of Indian teachers, administrators, and university professors has increased since 1972, teacher training programs are not recruiting, training, or retraining a sufficient number of Indian individuals as educators to meet the needs of a growing Indian student population in elementary, secondary, vocational, adult, and higher education;

8014(cj)-
(7)

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF EDUCATION

GOLDBELT PLACE
801 WEST 10TH STREET, SUITE 200
JUNEAU, ALASKA 99801-1894

MEMORANDUM NUMBER 95-09

TO: All parties interested in the regulations of the Department of Education
FROM: *Jerry Covey* Jerry Covey, Commissioner of Education
SUBJECT: pupil transportation DATE: August 10, 1994

Attached is a Notice of Proposed Changes in the Regulations of the Department of Education and material being proposed as regulation. The department is opening a period of public comment on these proposals. Additional copies of the proposed regulations are available from the Office of the Commissioner, Department of Education, Attn: Regulations Review, 801 West Tenth St., Suite 200, Juneau, Alaska 99801-1894.

Written responses must be received prior to 4:30 p.m. on September 20, 1994, and should be sent to the Commissioner of Education, Attn: Regulations Review, 801 West Tenth St., Suite 200, Juneau, Alaska 99801-1894. At any regularly scheduled meeting following that date, the State Board of Education will either adopt these or other proposals dealing with the same subject without further notice or may decide to take no action on them.

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Attachments: Notice of Proposed Changes
Proposed Regulations

**NOTICE OF PROPOSED CHANGES
IN THE REGULATIONS OF THE STATE BOARD OF EDUCATION**

Notice is given that the State Board of Education, under the authority of AS 14.07.020 and AS 14.07.060, proposes to adopt regulations in Title 4 of the Alaska Administrative Code, dealing with pupil transportation.

- (1) 4 AAC 27.015 is proposed to be adopted to set guidelines for providing transportation for private school students on public school buses.

Notice is also given that persons interested may present written statements or arguments relevant to the proposed action by writing to Commissioner's Office, Attn: Regulations Review, 801 West 10th Street, Suite 200, Juneau, Alaska, 99801-1894, so that they are received no later than 4:30 p.m. on September 20, 1994.

Persons with disabilities who need a special modification in order to comment on the proposed regulations should contact Mark Kissel at 465-2821 no later than 10 days before the close of the public comment period.

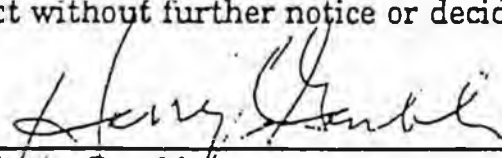
It is estimated that this action will require increased appropriations as follows: FY 1995, \$ 574,200; FY 96, \$ 594,300; FY 97, \$ 615,100; FY 98, \$ 636,600.

Copies of the proposed regulations may be obtained by writing to the Commissioner of Education at the above address.

The State Board of Education, after the deadline stated above, will either adopt these or other proposals dealing with the same subject without further notice or decide to take no action on them.

DATE:

August 12, 1994



Harry Gamble
Education Administrator

4 AAC 27 is amended by adding a new section to read:

4 AAC 27.015. TRANSPORTATION OF NONPUBLIC SCHOOL STUDENTS. (a) A district shall transport nonpublic school students in accordance with AS 14.09.020.

(b) To be eligible for transportation to a nonpublic school, a student must live the required distance from the nonpublic school as set out at 4 AAC 27.010, or along a designated hazardous route as set out in 4 AAC 27.035, in addition to the other requirements of AS 14.09.020.

(c) Where not inconsistent with AS 14.09.020, the regulations that apply to the transportation of public school students also apply to the transportation of nonpublic school students, including 4 AAC 27.010 (establishment of regular routes) and 4 AAC 27.060 (reimbursement to districts).

(d) A nonpublic school student is eligible for transportation only if the student lives within a distance that is equal to or less than the farthest distance a public school student is bused by that district.

(e) In AS 14.09.020, "nonpublic schools that are administered in compliance with state law" means non-exempt schools that meet the requirements of AS 14.45.030 and exempt school meet the requirements of AS 14.45.100-14.45-130. (Eff. ___/___/___; Register ___)

Authority: AS 14.07.030

AS 14.07.060

AS 14.09.020

FISCAL NOTE

Alaska Department of Education

Subject: Student Transportation

Citation: 4 AAC 27.015

Program Category:

Estimated appropriation required in thousands of dollars:

	FY 95	FY 96	FY 97	FY 98
100 Personnel Services				
200 Travel				
300 Contractual				
400 Commodities				
500 Equipment				
600 Land and Structures				
700 Grants, Claims, etc.	574.2	594.3	615.1	636.6
Total	574.2	594.3	615.1	636.6

Funding in thousands of dollars:

General Fund	574.2	594.3	615.1	636.6
Federal Funds				
Other				
Total	574.2	594.3	615.1	636.6

Positions:

Permanent Full-Time				
Part-Time/Seasonal				
Total No. of Staff Months				

Date: August 12, 1994

Prepared by: Harry Gamble

Harry Gamble
Education Administrator
465-2800

ADDITIONAL REGULATIONS NOTICE INFORMATION

AS 44.62.190(d)

Alaska Department of Education

Subject: pupil transportation

Citation: 4 AAC 27.015

Reason for Proposed Action: Development of program standards

Program Category and BRU:


Cost of implementation to DOE and available funding (in thousands of dollars)

Cost	Initial Year (FY 95)	Subsequent Years
General Funds	574.2	+3.5%
Federal Funds	-0-	-0-
Other Funds (specify)	-0-	-0-

Contact: Harry Gamble, Education Administrator, 801 W. 10th Street,
Juneau AK 99801-1894; (907) 465-2800

Origin of Proposed Action: Staff of DOE

August 10, 1994



Signature

Prepared by: Harry Gamble
Education Administrator
465-2800

NON-PUBLIC PUPIL TRANSPORTATION

January 23, 1995

Following are estimated costs per district for transporting non-public students in FY96. Estimates were provided by the districts listed.

Anchorage	\$3,000,000 - \$5,000,000
Fairbanks, current annual cost	321,740
Fairbanks, potential additional	201,085
Kenai Peninsula	Not Available
Kodiak	87,386
Ketchikan	43,000
Mat-Su	<u>450,000 - 500,000</u>
Total	\$4,103,211 - \$6,153,211

These estimates include current non-public student ridership as well as potential ridership based on criteria established by the 1/25/94 court decision in Ten Eyck v. Dept. of Education. In that decision, the court upheld the constitutionality of AS 14.09.020 and ruled that non-public students are eligible to ride public school buses in districts that provide transportation to public school students. Non-public school students may be transported up to the maximum distance which the district transports a public student.

Currently, Fairbanks transports the most non-public students on 8 essentially dedicated school buses (the district has indicated that if non-public busing were to end, that only 5 buses could be eliminated). The other districts listed above transport fewer than 50 non-public students each and incorporate those riders into existing routes.

Anchorage, Mat-Su and Kenai School Districts currently transport only a handful of non-public students, but it is in these districts that the greatest potential exists for substantial increases in ridership, costs and conflicts to occur. The majority of the state's non-public school students are located within these districts' boundaries. While few non-public school students currently utilize the transportation authorized by AS 14.09.020, the potential exists for costs to increase to, and exceed, the estimates provided above by the districts. Anchorage is also concerned about the potential conflict of transporting non-public school students while denying transportation of its alternative school students and students who elect to attend a school other than their assigned attendance center.

The Alaska Civil Liberties Union Foundation (ACLUF) has voiced concern and opposition to the concept of using public funds to provide transportation for non-public school students. The ACLUF has threatened to sue the state over this issue. Copies of correspondence submitted by the ACLUF, school districts and legislators in response to a request for public comment on regulations proposed to interpret AS 14.09.020 are available from the department.

To: State Board of Education

Date: September 22, 1994

From: Commissioner's Office

Action Item 95-27

■ ISSUE

- The Board is being asked to adopt guidelines for providing transportation for private school students on public school buses.

■ BACKGROUND

- This proposal comes as a result of last fall's lawsuit on transporting private school students on public school buses.
- The department estimates that private school busing will cost the state \$574,000 in FY 95 and increase by 3.5 percent annually.
- The Board opened a period of public comment on this proposal at its August 1-3 meeting. The public comment period ended September 20. Letters of public comment follow this memo.
- The proposed regulation follows this memo, as does a memo to school districts regarding the transportation of public school students.
- In this memo, the department asked school districts to report the increased costs relative to the transportation of private school students.
- In the meantime, the department will take the request for more funds to the legislature. The legislative forum will determine whether to expand pupil transportation.

■ OPTIONS

- Adopt the regulation as proposed
- Amend the proposal
- Take no action

■ ADMINISTRATION'S RECOMMENDATION


Motion: I move to table proposed regulation 4 AAC 27.015, which interprets AS 14.09.020, the law that provides for transporting private school students on public school buses.

DEPARTMENT OF EDUCATION
OFFICE OF THE COMMISSIONER

GOLDBELT PLACE
801 WEST 10TH STREET, SUITE 200
JUNEAU, ALASKA 99801-1894

(907) 465-2800
FAX (907) 465-4156

NUMBERED MEMORANDUM 95-12

TO: Superintendents
Transportation Coordinators
FROM: 
Jerry Covey, Commissioner

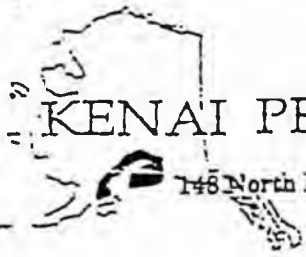
DATE: September 8, 1994

SUBJECT: Busing of Private School Students

With school starting around the state, the Department of Education has been receiving inquiries concerning the busing of private school students. Draft regulations distributed under numbered memorandum 95-09, are currently out for public comment. The deadline for submitting comments to the department is September 20.

At this time, the department has taken the following position on the issue of public school districts transporting private school students:

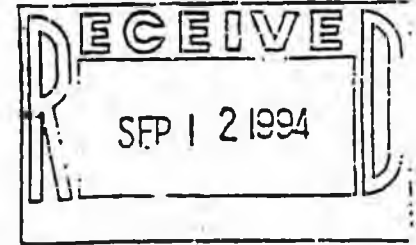
1. Districts may continue existing routes serving private schools if the routes were included in the district's transportation budget projection and the students were included in previous transportation student counts.
2. Private school students requesting transportation for the first time may be included as incidental riders on existing routes on a space available basis. Pick up and drop off times and locations are at the discretion of the district.
3. If current approved buses have existing capacity to support new private school students, with no increased cost to the state, districts may provide that additional service, through route extensions, route revisions, or establishment of new routes.
4. For the current school year, the department will not approve additional reimbursement for the purpose of transporting private school students, prior to a legislative appropriation. If a private school student transportation request is received by a school district that would result in additional routes, additional buses, or other increased cost, the school district should



KENAI PENINSULA BOROUGH SCHOOL DISTRICT

148 North Binkley Street • Soldotna, AK 99669-7598 • Phone 907/262-5846 • Fax 907/262-9645

September 7, 1994



State School Board of Education
Office of the Commissioner
801 W. 10th St., Suite 200
Juneau, AK 99801-1894

Subject: Proposed Pupil Transportation Regulations

Dear State School Board Members:

After reading the proposed pupil transportation regulations, I have some serious concerns that I feel the State Board needs to consider before any action is taken.

The issue of providing transportation for private schools is something that the state can do or not do, but for the state board to ask public school districts to administer transportation programs for private schools is certainly not defensible. I feel that these regulations will have an adverse effect on the operations of our district and the State.

There are many unanswered questions as I have asked myself the "what if" questions. Will the additional dollars required to provide these services be guaranteed by the Department of Education or the legislature? Who will determine the start and stop times of the private schools served? What happens when private schools are in session and the public schools are not? These are just a few of the questions that come to mind, and I will mention others more specifically as I address the proposed regulation changes

4AAC27.015 (b) If private school students are picked up within 1.5 miles of their school, who is going to pay for the hazardous busing proration, and who will determine the qualifications for designating the area as hazardous? Who will be responsible for the collection of such adjustments and submittal to the department?

4AAC27.015 (c) Will the public or private school determine the routing for schools; and will school district policy or private school policy prevail in determining routes? An example might be our district policy that provides transportation only on city and state maintained roads; a private school may either be located on or want to provide transportation on borough roads. Would our district then be expected to deny transportation services to public school students on borough maintained roads as per our district policy, while at the same time providing that service to private school students as per their policy?

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

DEPARTMENT OF EDUCATION
OFFICE OF THE COMMISSIONER

GOLDBELT PLACE
801 WEST 10TH STREET, SUITE 200
JUNEAU, ALASKA 99801-1554

(907) 465-2800
FAX (907) 465-4156

NUMBERED MEMORANDUM 95-12

TO: Superintendents
Transportation Coordinators
FROM: *Jerry Covey*
Jerry Covey, Commissioner

DATE: September 8, 1994

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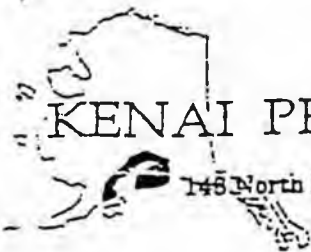
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Numbered Memorandum 95-12
Superintendents and Transportation Coordinators
September 8, 1994
Page 2 of 2

determine the most cost effective method of honoring the transportation request, and submit the cost data to the department's pupil transportation program administrator. The department will then include the projected additional costs in a FY95 supplemental request and in it's FY96 budget request to the legislature.

5. If the department receives a separate appropriation, pursuant to AS 14.09.020, then additional costs for transporting private school students can be approved for FY95 and subsequent years.

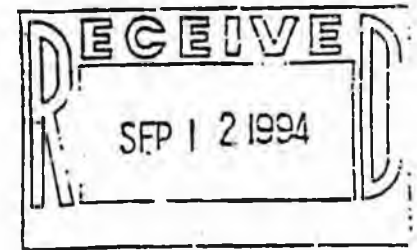
Until regulations are adopted, school districts should follow these guidelines when approached by parents or organizations requesting transportation services for their private school students.



KENAI PENINSULA BOROUGH SCHOOL DISTRICT

145 North Binkley Street • Soldotna, AK 99669-7598 • Phone 907/262-5846 • Fax 907/262-9645

September 7, 1994



State School Board of Education
Office of the Commissioner
801 W. 10th St., Suite 200
Juneau, AK 99801-1894

Subject: Proposed Pupil Transportation Regulations

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The issue of providing transportation for private schools is something that the state can do or not do, but for the state board to ask public school districts to administer transportation programs for private schools is certainly not defensible. I feel that these regulations will have an adverse effect on the operations of our district and the State.

There are many unanswered questions as I have asked myself the "what if" questions. Will the additional dollars required to provide these services be guaranteed by the Department of Education or the legislature? Who will determine the start and stop times of the private schools served? What happens when private schools are in session and the public schools are not? These are just a few of the questions that come to mind, and I will mention others more specifically as I address the proposed regulation changes.

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4AAC27.015 (d) This portion of the new regulation will require that we operate a transportation contract for each private school. The longest route on the Kenai Peninsula is approximately 45 miles. This means that we would have to provide transportation within 45 miles of every private school. If this is the case, we would probably be adding more buses to our routes than the department is anticipating, or paying parents directly for transporting their students to private schools. I seriously question the constitutionality of such action.

I have been an administrator on the Kenai Peninsula for the last 15 years, and if I wanted to be an administrator in a private school I would have applied for such a position. I feel the board needs to consider all of the unintended consequences of their actions. If the board and the state want to provide transportation for private schools, fund it separately and do not put the public schools in the middle. We have enough programs and regulations to administer without adding more. We really do not want to administer private school programs nor should we be told to do so.

I urge you to fully consider the ramifications of all the proposed regulation changes. We will comply with whatever we are ultimately directed to do, but will do so with the intent to be part of the solution, not part of the problem.

Sincerely,



John K. Dahlgren, Associate Superintendent
Planning, Operations and Technology

cc: Commissioner Jerry Covey
Duane Guiley, Department of Finance
Senator Suzanne Little
Senator Judy Salo
Representative Gail Phillips
Representative Gary Davis
Representative Mike Navarre

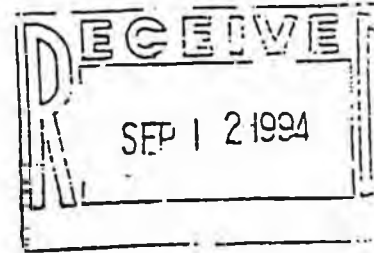


Saint John's Community School

18940 Monastery Drive, Eagle River, AK 99577

Administrator: Barbara Parker

Phone: (907) 696-3920



September 6, 1994

Department of Education
Commissioner
Regulations Review
801 West Tenth St.
Suite 200
Juneau, Alaska 99801-1894

Dear Sirs: ..

In regards to proposed regulation 4 AAC 27.015, I feel I must comment. The idea of providing public school buses to private schools may seem appealing, but does not make good economic sense. The added expense and administrative burden are not justified. Buses are available for occasional use, on a lease basis, and this is sufficient for now.

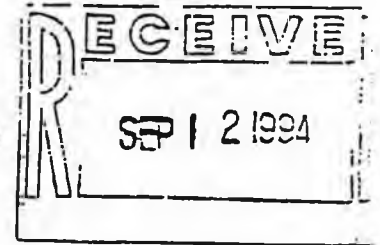
Sincerely,

Barbara Parker
Administrator

cc: Rep. Ed Willis

Senator Judith E. Salo

Alaska State Legislature



September 8, 1994

Jerry Covey, Commissioner of Education
Attn: Regulation Review
Department of Education
801 W 10th Street, Suite 200
Juneau, AK 99801-1894

Dear Commissioner Covey:

I would like to voice my opposition to the adoption of regulations which would provide private school transportation at a substantial cost to the state.

It is absurd to even consider this expenditure when we have been unable to increase the Unit Value for basic funding in our public schools. The effects of inflation over the last decade have seriously eroded the purchasing power of the \$61,000 basic unit. Surely this is a higher priority than funding private school transportation.

Local districts seem to have mutually satisfactory arrangements with private schools. A state mandate to provide more extensive services potentially violates Alaska's constitution and, it jeopardizes positive local interaction between private and public schools.

I am hopeful the proposed amendments to 4 ACC 27.015 will not be adopted.

Sincerely,

Judith E. Salo
A.T.M.
Judith/E. Salo

cc: Stowell Johnstone, Chairman State Board of Education
Bob Christal, Superintendent ASD
Dr. Walter Bromenenschenkel, Superintendent KPSD
Claudia Douglas, President NEA Alaska
Earl Rose, AASB

JES/atm

South Anchorage • Indian • Bird Creek • Girardwood • Hope • Kenai • Nikiski • Kalifornsky Beach

☐ During Session: State Capitol • Juneau, AK 99801 • (907) 465-4940 • (907) 465-3766 FAX
☐ Interim Anchorage: 716 W 4th, Suite 450 • Anchorage, AK 99501 • (907) 258-5155 • (907) 258-5571 FAX
☐ Interim Kenai: 34824 K-Beach Rd. • Kenai, AK 99611 • (907) 262-2254 • (907) 262-1884 FAX

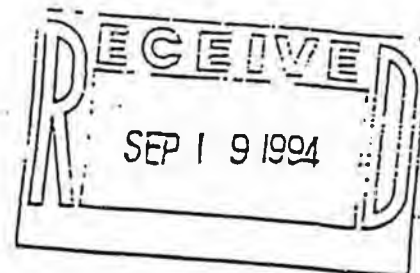
REPRESENTATIVE CON BUNDE
CHAIR HEALTH, EDUCATION
& SOCIAL SERVICES

Alaska State Legislature



House of Representatives

INTERIM:
715 WEST 4th AVENUE
ANCHORAGE, AK 99501-2133
OFFICE: (907)252-8168



September 16, 1994

The Honorable Jerry Covey,
Commissioner of Education
801 West 10th Street, Suite 200
Juneau, Alaska 99801-1894

Dear Jerry:

In response to your Memorandum Number 95-09, regarding pupil transportation, and specifically the Notice of Proposed Changes in the Regulations of the Department of Education, I do wish to comment.

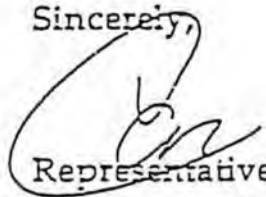
I am in opposition to the proposed 4 AAC 27.015, which would set guidelines for the transportation of private school students on public school buses. I question the validity of using state funds for transporting private school students. In light of the serious decline in state revenues, I feel it is prudent that we keep our shoulder to the wheel in meeting the basic responsibilities the state has to carry out our educational goals.

My staff contacted Tam Cook, and subsequently, Michael Ford, Legislative Counsel, for information and history on this issue. In my review of what was provided to me by Mr. Ford, I feel there perhaps needs to be further examination into the Fairbanks Superior Court decision, and the Supreme Court's assertion that AS 14.09.020 is, it found, unconstitutional. It would seem that the Department of Education would have pursued questioning this finding.

I would recommend that the Board of Education not adopt any new regulations regarding this matter. This may well be an issue that the legislature needs to address.

Please do not hesitate to contact my office if you have any further questions of me.

Sincerely,

A handwritten signature in dark ink, appearing to be 'Con Bunde', written over the word 'Representative'.

Representative Con Bunde

cc: State Board of Education



OFFICIAL BUSINESS

Alaska State Legislature

House of Representatives

REPRESENTATIVE
CYNTHIA TOOHEY
DISTRICT 13

STATE CAPITOL ROOM 104
JUNEAU, ALASKA 99801-1182
(907) 463-2919

716 WEST 4TH AVENUE, SUITE 330
ANCHORAGE, ALASKA 99501-2133
(907) 258-8193

September 15, 1994

The Honorable Jerry Covey
Commissioner of Education
801 West 10th Street, Suite 200
Juneau, AK 99801-1894

Dear Mr. ~~Covey~~ ^{Jerry}:

I am writing in response to the State Board of Education's notice of proposed regulations dealing with pupil transportation. Specifically, I am opposed to the proposed 4 AAC 27.015, which would set guidelines for transportation of private-school students on public-school buses.

My main reason for opposing this proposal is the estimated fiscal impact. In times of declining resources, we simply can not adopt regulations that codify expenses that do not meet the State's core educational mission. My staff contacted Mr. Harry Gamble in your office to find out the history of this issue. While I am aware that State law dating from 1972 sets out that transportation be provided by the State to private-school students, I am unsure if the Fairbanks Superior Court's decision upholding that law last summer was in line with the Supreme Court's prior ruling that an antecedent law was unconstitutional. I wonder why the Department of Education did not seek to pursue its assertion that AS 14.09.020 is, in fact, unconstitutional. Perhaps the Legislature needs to revisit this issue.

Pending a more final resolution of debate over providing State-funded transportation to private-school students, I strongly urge you to recommend to the Board of Education that no new regulations dealing with the issue be adopted. Even if some monies are expended on such transportation between now and the point of final resolution, I think it will be best to

CORRECTION

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Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska



OFFICIAL BUSINESS

Alaska State Legislature

House of Representatives

REPRESENTATIVE
CYNTHIA TOOHEY
DISTRICT 13

STATE CAPITOL ROOM 102
JUNEAU, ALASKA 99801-1182
(907) 465-2919

716 WEST 4TH AVENUE, SUITE 330
ANCHORAGE, ALASKA 99501-2133
(907) 258-8195

September 15, 1994

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Commissioner of Education
801 West 10th Street, Suite 200
Juneau, AK 99801-1894

Dear Mr. ~~Covey~~ ^{Jerry}:

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Pending a more final resolution of the debate over providing State-funded transportation to private-school students, I strongly urge you to recommend to the Board of Education that no new regulations dealing with the issue be adopted. Even if some monies are expended on such transportation between now and the point of final resolution, I think it will be best to

Page two, Jerry Covey, September 15, 1994.

hold off on sanctioning in regulation a practice that may not properly belong in statute.

Thank you for considering my comments on this matter. Please don't hesitate to contact my office if you require any more information from me.

Sincerely,

A handwritten signature in cursive script, appearing to read 'C. Toohy'.

Cynthia D. Toohy
Representative

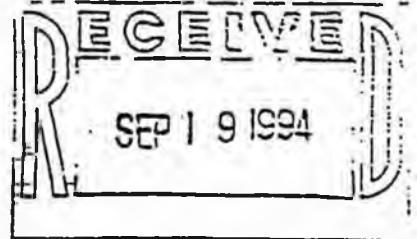
CC: State Board of Education



Matanuska-Susitna Borough School District

125 WEST EVERGREEN — PALMER, ALASKA 99645 — (907) 746-9200

Dr. Ell B. Sorensen, Superintendent



September 16, 1994

Mr. Jerry Covey
Commissioner of Education
Alaska Department of Education
801 W. 10th Street, Suite 200
Juneau, AK 99801-1894

SUBJECT: Proposed Pupil Transportation Regulations
Pertaining to Private School Transportation

Dear Commissioner Covey:

The District has reviewed the regulations proposed by the Alaska Department of Education on August 10, Memorandum 95-09, which would address the transportation of private school students. The proposed regulations require districts to assume responsibility for the transportation of non-public, private school students.

Currently, and historically, very few private school students have been transported to or from school on district school buses. At this time, three (3) to five (5) students are transported on a Talkeetna Elementary bus to a private school located near the district school. We are not aware of any private school students receiving transportation on district buses anywhere else in the district.

Using the proposed regulations as a guide and the little information that the district has of the private schools now operating within the school district, we explored the various means by which the district could provide transportation to students attending private schools within its boundaries.

Almost 95% of the district's 11,900 students enrolled in the district's 19 schools are located in the Mat-Su valley "core" area. All seven (7) of the private schools listed in the phone book are also located in the valley core area. According to information from six (6) of the seven (7) schools, combined enrollment is less than 600 students. None of these 600 students are transported to school on district school buses.