

MEMORANDUM

State of Alaska Department of Law

TO: Members, State Board of Education and Early Development

THRU: Dr. Deena Bishop, Commissioner
Department of Education and Early Development

FROM: Morgan Griffin
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Public Corporations & Governmental Services Section
Department of Law

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SUBJECT: 21E Attorney General's Report

This memorandum describes the status of current litigation involving the Department of Education and Early Development.

1. *DEC Enforcement Matter related to Contamination at Joe Parent Vocational Education Center in Aniak.* The Alaska Department of Environmental Conservation (DEC) identified DEED, DOT&PF, and the Kuspuk School District, as well as the federal government, AT&T Alascom, Lockheed Martin Corporation, and Exelis-Arctic Services, Inc., as potentially responsible parties (PRPs) for polychlorinated biphenyls (PCBs) and trichloroethylene (TCE) contamination at the site of the Aniak Middle School. The contamination dates back to the use of the site by the U.S. Air Force as a White Alice Communications System site from 1958 to 1979.

At a mediation in 2013, the PRPs agreed to the allocations (percentages of responsibility) that each party would bear in an agreement to share past and future clean-up costs for PCB and TCE contamination, although not all issues relating to TCE contamination could be resolved. In 2015, the PRPs executed an agreement (which remains in effect) to maintain the sub-slab-depressurization system and the TCE monitoring program at the site.

In 2016, Consent Decree (a settlement agreement in the form of a court order) was fully executed. In 2017, DOT&PF retained contractors who conducted PCB clean-up work. The TCE remedial investigation report was issued in 2018, and the TCE feasibility study was approved by DEC in 2019. The feasibility study includes a recommended alternative for addressing TCE at the site. DEC also requested the drilling of another monitoring well to assess the underground movement of TCE.

Kuspuk School District has discontinued its use of the building as of January 31, 2022. Due to DOT&PF funding and allocation decisions, the demolition of the building was completed in the fall of 2023. The parties must still resolve the allocation of responsibility for cleanup costs for PCBs that may exist in the slab and under the building, cleanup costs for TCE, a newly discovered spill from an underground gas storage tank and the administrative costs of DEC. The parties have resolved the TCE liability apportionment with the state paying 15% of the TCE cleanup costs (i.e., DEED and DOT equally paying 7.5%). The parties need to finalize language for the Consent Decree and institutional controls and that is what counsel is working on now. Jennifer Currie, Chief AAG for the Environmental Section, has been conducting monthly teleconference calls with counsel for all parties to try to get them to agree on language but DOT is still reviewing due to concerns about TCE. If agreement is not reached soon, she will mandate mediation. There was an attempt to try to wrap the issues surrounding the underground storage tank spill into this settlement but given its early stage of development, that does not appear likely. AAG Gene Hickey in the Public Corporations & Governmental Services Section is handling this matter.

2. *Alexander et al. v. Acting Commissioner Heidi Teshner, State of Alaska, Department of Education & Early Development.* On January 24, 2023, individual teachers and parents of students enrolled in Alaska school districts filed suit in superior court against the state alleging that the statutes implementing the correspondence study program are unconstitutional on their face and as applied.

On January 26, 2023 parents of students enrolled in correspondence study programs who have used program allotments to fund private school tuition (the intervenors) filed a motion to intervene in the case as defendants, which the court granted. On April 12, 2024 the court issued a decision denying the state's motion to dismiss and granting plaintiffs' motion for summary judgment. In its order the court determined that AS 14.03.300-.310 must be struck down as unconstitutional in their entirety.

On May 3, 2024 the state filed a notice of appeal of the final judgment to the Alaska Supreme Court. After hearing oral argument, on June 28, 2024, the court issued a summary order reversing the superior court ruling that struck down Alaska's correspondence school statutes as unconstitutional. The court held that the statutes have a "plainly legitimate sweep" because there are "many constitutionally permissible uses of allotment funds." The court also ruled that any future lawsuit brought by plaintiffs claiming a specific use of the allotments is unconstitutional must be brought against the school district that approved the specific allotment spending. The Alaska Supreme Court remanded the matter back to the superior court for further proceedings.

On February 6, 2025 the plaintiffs filed with the superior court a Motion to Amend

Complaint and Join Parties, seeking to add as defendants the Anchorage School District, Matanuska-Susitna Borough School District, Denali Borough School District and Galena City School District, which the court granted on March 3, 2025 and on March 28, 2025 the supreme court issued its formal opinion, reversing the judgment of the superior court and remanding for further proceedings. On April 14, 2025, the intervenors filed a Motion to Dismiss Plaintiffs' Amended Complaint and the remaining parties filed an Answer to the Amended Complaint. Three of the school districts filed a limited opposition to the intervenor's motion on May 12, 2025. The state filed a response to intervenors' motion and plaintiffs filed an opposition to the motion on May 20, 2025. On September 29, 2025, the court denied the intervenors' motion to dismiss and the parties are now engaged in discovery on plaintiffs' claims. The Attorney General has retained outside counsel to represent the state in the litigation.

3. *In the matter of Alaska Department of Education and Early Development, OHA Docket No. 25-36-I, Federal Impact Aid Proceeding.* On May 16, 2025, the U.S. Department of Education (USDOE) notified the Department of Education and Early Development (DEED) that Alaska is not eligible to take into consideration federal impact aid payments when calculating state aid to school districts for FY2026 because the state's revenue disparity percentage is not within the 25% disparity allowed under the impact aid federal requirements.

The Department has retained outside counsel, with experience successfully challenging impact aid determinations, to represent the state in this matter. The Department, through counsel, filed a request for hearing, appealing USDOE's Impact Aid determination, on July 14, 2025. On July 29, 2025, USDOE referred the matter to ALJ Elizabeth Figueroa, who subsequently assigned opposing counsel and scheduled an initial status conference for September 11, 2025. The Department is working with legal counsel to consider arguments on appeal, review the data submitted to the Impact Aid Program and consider alternative data submissions and possibly alternative methodologies that may satisfy federal requirements.

4. *Fairbanks North Star Borough School District et al v. SOA, DEED*

On January 20, 2026, the Fairbanks North Star Borough School District jointly with the Kuspuk School District filed suit in Anchorage Superior Court against the State of Alaska, Department of Education & Early Development, and Governor Dunleavy and Commissioner Bishop, in their official capacities, alleging that the state has failed to fund public education in the state at a level that allows the Districts to provide instruction in core subjects to State-adopted standards. In their complaint, the Districts ask the court for a declaratory judgement that the State is in violation of the Alaska Constitution's Education Clause by failing to fund education sufficiently to provide Alaskan students with a sound basic education and meaningful opportunity to achieve proficiency in core educational subjects; that the Districts' and Alaskan students substantive due process right have been violated because of the State's education funding failures; for a

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mandatory injunction directing the State to remedy the violations the Districts allege; and for a mandatory injunction directing the State to commission and conduct a court-supervised school finance adequacy summary.