

IN THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA; MICHAEL HANLEY, COMMISSIONER OF ALASKA DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT, in his official capacity,

Appellants/Cross-Appellees,

v.

KETCHIKAN GATEWAY BOROUGH; AGNES MORAN, an individual, on her own behalf and on behalf of her son; JOHN COSS, a minor; JOHN HARRINGTON, an individual; and DAVID SPOKELY, an individual,

Appellees/Cross-Appellants.

**HAND DELIVER**

MAY 12 2015

**K & L GATES LLP**

Supreme Court No. S-15811/15841

Trial Court Case No. 1KE-14-00016 CI

**CITIZENS FOR THE EDUCATIONAL ADVANCEMENT OF ALASKA'S CHILDREN'S MOTION FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE**

**I. INTRODUCTION**

Pursuant to ALASKA R. APP. P. 212(c)(9), Citizens for the Educational Advancement of Alaska's Children ("CEAAC") respectfully requests leave to file the attached amicus brief supporting reversal of the superior court's erroneous decision on summary judgment.

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CEAAC and its member school districts and organizations comprise an estimated 63,026 Alaskan school children and over 12,000 educators.<sup>1</sup> As an organization that represents school districts in incorporated municipalities as well as Regional Educational Attendance Areas (“REAA’s”) in remote communities, CEAAC is devoted to ensuring that the State meets its constitutional obligation to provide an appropriate public education for all Alaskan students. CEAAC and its members face significant hardship should the trial court’s erroneous decision stand, as elimination of the Required Local Contribution (“RLC”) element of Alaska’s educational funding formula would result in a substantial redistribution of State funding away from Alaska’s neediest students.

CEAAC’s participation will provide the Court with unique factual and legal insight from districts facing some of Alaska’s most daunting educational challenges. Indeed, many of the challenges facing CEAAC’s member districts are seen nowhere else in the United States, particularly in districts serving bilingual Alaska Native communities reliant on a subsistence economy. CEAAC will provide the Court with helpful analysis and authority on the magnitude of the superior court’s error in concluding that the RLC is a “dedicated tax” under Article IX of the Alaska Constitution.

CEAAC will also bring to the Court’s attention the inherent conflict in the trial court’s decision, which effectively held that the “anti-dedication” clause of Article IX supersedes the State’s obligation to provide an appropriate public education for all children.

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<sup>1</sup> See CEAAC Member List (attached hereto as Exhibit A). See also District Enrollment by Grade, FY 2015, available at <http://education.alaska.gov/stats/DistrictEnrollment/2015DistrictEnrollment.pdf>.

See Alaska Const., Art. VII, § 1 (“The legislature shall ... establish and maintain a system of public schools open to all children of the State[.]”).<sup>2</sup> CEAAC is particularly well situated to address both issues given its history as an advocate for effectuating the promise of public education for all Alaskan children.

## II. DISCUSSION

### 1. Legal Standard

Under Alaska Appellate Rule 212(c)(9), an amicus curiae may file a brief with the Court upon motion specifying the “interest of the applicant and ... the reasons why a brief of an amicus curiae is desirable.”

### 2. CEAAC and its Members Have a Substantial Interest in this Litigation

CEAAC is a coalition of twenty-three school districts and educators, which was originally incorporated in January 1998 to address the problem of aged and deteriorated schools in rural Alaska. Some of CEAAC’s member schools include the Anchorage School District, the Lower Yukon School District, the Lower Kuskokwim School District, and the Yukon-Koyukuk School District. Altogether, CEAAC’s member school districts educate nearly half of all school children in the State of Alaska.

NEA-Alaska is a member of CEAAC. NEA-Alaska represents over 12,000 educators that provide direct services to students every day in schools statewide. Cook Inlet Tribal Council is also a member of CEAAC.

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<sup>2</sup> See also *Breese v. Smith*, 501 P.2d 159, 167 (Alaska 1972) (Noting that Article VII “guarantees all children of Alaska a right to public education.”).

CEAAC's role is unique as a membership organization that represents struggling schools and at-risk students statewide. Alone among organizations in Alaska, CEAAC speaks for those who most need educational assistance from the State. With the exception of Anchorage, all of CEAAC's member districts are rural, and generally serve areas with limited local economic activity or taxable property. The majority of CEAAC's member districts are REAAs which lie outside of organized cities and boroughs, and lack any taxing authority.

Many of CEAAC's member districts serve small Alaska Native communities that cannot be reached by road, in which a single store may comprise the entire private economic sector, and where subsistence hunting and gathering is the most important economic activity. Costs to operate schools in these communities are high, and professional staff are difficult to recruit, house, and retain. Cultural barriers, harsh environmental conditions, and poverty create challenges in every classroom.

As an example, Yupiit School District (based in Akiachak) is an REAA which often ranks last in state achievement scores, with all of its students coming from families living in poverty. The economies of the three communities within the Yupiit School District are based on subsistence, and a cash economy is largely absent. The district has no tax base and there is little likelihood of developing one in the near future.

Yupiit is a CEAAC member. Many of CEAAC's member REAA districts face similar challenges. Providing equal educational opportunities for students in this setting requires dependable funding. However, because rural districts typically lack a local tax

base, they have no control over the resources allocated to them. They are fiscally dependent on the Alaska Legislature to maintain a fair and equitable funding formula to provide the means to deliver adequate educational opportunities for their students.

The impact of the trial court's decision would be devastating for CEAAC and its members should the decision stand. CEAAC estimates that removal of the Required Local Contribution would take in excess of \$220,000,000 per year out of the State's foundation funding program. Removing this important source of revenue from the distribution formula would defeat the State's goal of providing adequate and equalized educational funding to all districts and will result in redistribution of state aid. While boroughs and cities may be able to account for such a loss through additional local taxation, rural communities in REAAs would not have that ability, and would inevitably sustain cuts that would reduce already stretched budgets to unacceptable levels of service. Due to the grave impact on CEAAC's member districts and the effect the trial court's erroneous decision would have on the quality of education statewide, CEAAC shares a deep interest in the outcome of this case.

### **3. CEAAC's Participation as Amicus Curiae is Desirable**

CEAAC respectfully submits that its participation as amicus curiae would be desirable. CEAAC's attached brief will provide the Court with additional background and argument from the perspective of schools facing some of Alaska's most difficult educational challenges, yet without local taxing authority to solve these challenges.

CEAAC's brief will provide the Court with helpful argument and authority establishing

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the magnitude of the trial court's error in rejecting the local contribution requirement of Alaska's educational funding mechanism.

In the brief filed contemporaneously with this motion, CEAAC establishes the trial court's error in concluding that the RLC is a "dedicated tax" under Article IX of the Alaska Constitution. CEAAC also brings to the Court's attention the inherent conflict in the trial court's decision, which effectively held that the Anti-Dedication Clause under Article IX effectively supersedes the State's mandate to establish and maintain a public school system under Article VII, § 1. Specifically, in its opening brief below, the Ketchikan Gateway Borough ("KGB") argued that the State has a constitutional duty to "establish and maintain a system of public schools open to all children of the state."<sup>3</sup> After citing to Article VII of the Alaska Constitution and discussing Alaska Supreme Court decisions interpreting the State's responsibility in the field of education, KGB then argued that the State has violated its Article VII, § 1 duties by "unconstitutionally requiring the Borough to fund the Ketchikan Gateway Borough School District ... with an annual required local contribution."<sup>4</sup> The Borough failed to establish the scope of the State's constitutional duty under Article VII, § 1, but presumed for purposes of its argument that the State's constitutional duty to provide adequate funding requires the State to fully fund education solely from State resources, *i.e.*, the full amount of KGB's basic need as established under the education foundation funding program.

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<sup>3</sup> KGB's Motion for Summary Judgment at 1 [Exc. 015].

<sup>4</sup> *Id.* at 2 [Exc. 016].

Based on this alleged duty to fully fund local school districts from state revenue sources, KGB focused its legal arguments on the RLC being a dedicated tax in violation of Article IX, § 7. KGB never fully developed its argument with respect to the State's duties under Article VII, § 1, and its underlying premise that the State must provide 100% of the funding to borough schools. CEAAC's amicus brief more fully explains the purpose of the State foundation program and the constitutionality of the funding program as an exercise of the constitutional authority under the Education Clause, Article VII, § 1.

CEAAC is in a unique position to brief the Article VII, § 1 aspect of this case given its prior participation in legal challenges seeking to effectuate the constitutional mandate of public education for all Alaskan children. In 1997, CEAAC challenged the State's method for funding capital improvement projects as both a violation of the Equal Protection Clause and the Education Clause of the Alaska Constitution. *See Kasayulie, et al. v. State*, 3AN-97-03782 CI.<sup>5</sup> Under the State's capital improvements program for school facilities, borough and city districts with taxing authority received automatic reimbursement in the amount of 70% of any bonds issued for construction of school facilities. Funding of REAA capital improvements was subject to the vagaries of the legislative process. REAA school projects, although ranked in the top 10 statewide priorities for school construction, went unfunded year after year because of the political process.

In his order on summary judgment, Superior Court Judge John Reese held that "facilities funding is an integral part of education and as such is inseparable from the State's

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<sup>5</sup> See Appendix A.

obligation to establish and maintain a public education system.”<sup>6</sup> The superior court granted summary judgment in favor of the plaintiffs, finding that the State’s failure to provide adequate funding for school facilities in rural areas violated the Education Clause.<sup>7</sup>

More recently, in *Moore v. State*, 3AN-04-09756 CI, CEAAC participated in a 21-day trial before then-Superior Court Judge Sharon Gleason which challenged the adequacy of State funding to districts addressing the “achievement gap” between urban and rural students. The trial before Judge Sharon Gleason resulted in a thorough review of the State’s school finance system, educational standards, the State’s assessment system, and the State’s obligation to provide assistance to local districts with a large percentage of chronically underachieving students.

In particular, Judge Gleason addressed in detail the foundation funding program and the distribution formula involving all available resources at issue in this case. Judge Gleason held that the State has a duty under Article VII, § 1 to provide adequate funding to school districts to insure that students have an a meaningful opportunity to achieve proficiency on the performance standards and meaningful exposure to the content standard.<sup>8</sup> Judge Gleason adopted a constitutional framework under the Education Clause that should be applied in considering the constitutionality of the RLC component of the distribution formula that the lower court found unconstitutional.

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<sup>6</sup> Judge Reese’s Order Granting Plaintiffs’ Motions for Partial Summary Judgment on Facilities Funding at 4 [Appendix A, p. 4].

<sup>7</sup> *Id.* at 6-10.

<sup>8</sup> Judge Gleason’s June 2007 Decision and Order at 178-184 [Appendix B].

CEAAC submits that its history as an organization seeking to effectuate the purpose and intent of Article VII, § 1 of the Alaska Constitution renders its participation as amicus curiae appropriate and desirable. The State of Alaska supports CEAAC's amicus participation in this matter. The Ketchikan Gateway Borough has supported the amicus participation of its sister borough, the Fairbanks North Star Borough, yet it has opposed the participation of the Association of Alaska School Boards and other educational organizations.<sup>9</sup> KGB claims that "the constitutional questions in this case do not concern public education generally, or even public education funding generally."<sup>10</sup> However, KGB seeks to overturn the public funding mechanism for all schools in the State of Alaska. KGB also suggests that an amicus brief should not favor the position of a litigant,<sup>11</sup> but clearly any amicus brief will support one party's "position as to affirmance or reversal[.]"<sup>12</sup>

### III. CONCLUSION

For the reasons set forth herein, CEAAC submits that it has a substantial interest in the outcome of this litigation, and that its participation as an amicus would assist the Court in deciding this matter. CEAAC respectfully requests that the Court accept its attached amicus brief for filing.

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<sup>9</sup> See Appellees/Cross Appellants' Opposition to Motion for Leave to File a Joint Amicus Curiae Brief dated April 22, 2015.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.* (arguing that "amicus curiae means friend of the court, not friend of a party.").

<sup>12</sup> *Cf.* Alaska R. App. P. 212(c)(9).

DATED at Anchorage, Alaska this 12th day of May, 2015.

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CEAAC'S MOTION FOR LEAVE TO PARTICIPATE AS *AMICUS CURIAE*  
*STATE OF ALASKA V. KETCHIKAN GATEWAY BOROUGH, ET AL.*  
SUPREME COURT NO. S-15811/15841

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CEAAC Member as of February 12, 2015

Alaska Gateway School District

Anchorage School District

Bristol Bay Borough School District

Chatham School District

Denali Borough Schools

Iditarod Area School District

Kake City School District

Kashunamiut School District

Kuspuk School District

Lower Kuskokwim School District

Lower Yukon School District

Nenana City School District

Northwest Arctic Borough School District

Southeast Island School District

St. Mary's School District

Yukon Flats School District

Yukon-Koyukuk School District

Yupiit School District

Cook Inlet Tribal Council

NEA-Alaska

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Appellees/Cross-Appellants.

HAND DELIVER

MAY 12 2015

K & L GATES LLP

Supreme Court No. S-15811/15841

Trial Court Case No. 1KE-14-00016 CI

**PROPOSED ORDER GRANTING CITIZENS FOR THE EDUCATIONAL ADVANCEMENT OF ALASKA'S CHILDREN'S MOTION FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE**

Upon consideration of the Motion for Leave to Appear as Amicus Curiae filed by Citizens for the Educational Advancement of Alaska's Children ("CEAAC"),

IT IS HEREBY ORDERED that the Motion is GRANTED. CEAAC's amicus brief, filed concurrently with its Motion, is hereby accepted for filing pursuant to Appellate Rule 212(c)(9).

DATED this \_\_\_\_ day of \_\_\_\_\_, 2015.

Justice of the Supreme Court

IN THE SUPREME COURT OF THE STATE OF ALASKA

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MAY 12 2015

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Supreme Court No. S-15811/15841

Trial Court Case No. 1KE-14-00016 CI

**CERTIFICATE OF TYPEFACE & POINT SIZE AND CERTIFICATE OF SERVICE**

Pursuant to Appellate Rule 513.5(c)(2), I hereby certify that the typeface used in Citizens for the Educational Advancement of Alaska's Children' Motion for Leave to Participate as Amicus Curiae, Proposed Order Granting said motion, Brief of Amicus Curiae Citizens for the Educational Advancement of Alaska's Children, and this Certificate of Typeface & Point Size and Certificate of Service is Times New Roman, 13-point, Proportionally spaced.

I hereby certify that on the 12th day of May, 2015, a true and correct copy of CEAAC's Motion for Leave to Participate as Amicus Curiae, Proposed Order, Brief of Amicus Curiae, and this Certificate were served by hand delivery on the following counsel of record:

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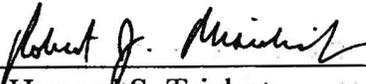
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**K & L GATES LLP**

Supreme Court No. S-15811/15841

Trial Court Case No. 1KE-14-00016 CI

APPEAL FROM THE SUPERIOR COURT  
FIRST JUDICIAL DISTRICT AT KETCHIKAN  
THE HONORABLE WILLIAM B. CAREY, PRESIDING

**BRIEF OF *AMICUS CURIAE* CITIZENS FOR THE EDUCATIONAL  
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Filed in the Supreme Court of  
the State of Alaska, May \_\_\_, 2015

MARILYN MAY, CLERK

By: \_\_\_\_\_  
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### ALASKA CONSTITUTION

#### **Article VII, § 1. Public Education**

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

#### **Article IX, § 7. Dedicated Funds**

The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska. [Amended 1976]

#### **Article X, § 2. Local Government Powers**

All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

### ALASKA STATUTES

#### **AS 14.12.010. Districts of state public school system.**

The districts of the state public school system are as follows:

- (1) each home rule and first class city in the unorganized borough is a city school district;
- (2) each organized borough is a borough school district;
- (3) the area outside organized boroughs and outside home rule and first class cities is divided into regional educational attendance areas.

#### **AS 14.14.060. Relationship between borough school district and borough; finances and buildings.**

(c) Except as otherwise provided by municipal ordinance, the borough school board shall submit the school budget for the following school year to the borough assembly by May 1 for approval of the total amount. Within 30 days after receipt of the budget the assembly shall determine the total amount of money to be made available from local sources for school purposes and shall furnish the school board with a statement of the sum to be made available. If the assembly does not, within 30 days, furnish the school board with a statement of the sum to be made available, the amount requested in the budget is

automatically approved. Except as otherwise provided by municipal ordinance, by June 30, the assembly shall appropriate the amount to be made available from local sources from money available for the purpose.

**AS 14.17.400. State aid for districts.**

(b) If the amount appropriated to the public education fund for purposes of this chapter is insufficient to meet the amounts authorized under (a) of this section for a fiscal year, the department shall reduce pro rata each district's basic need by the necessary percentage as determined by the department. If the basic need of each district is reduced under this subsection, the department shall also reduce state funding for centralized correspondence study and the state boarding school by the same percentage.

**AS 14.17.410. Public school funding.**

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

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

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

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

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

(C) the ADMs of each school in a district, as adjusted according to (A) and (B) of this paragraph, are added; the sum is then multiplied by the special needs factor set out in AS 14.17.420(a)(1) and the secondary school vocational and technical instruction funding factor set out in AS 14.17.420(a)(3);

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

(E) notwithstanding (A) - (C) of this paragraph, if a school district's ADM adjusted for school size under (A) of this paragraph decreases by five percent or more from one fiscal year to the next fiscal year, the school district may use the last fiscal year before the decrease as a base fiscal year to offset the decrease, according to the following method:

(i) for the first fiscal year after the base fiscal year determined under this subparagraph, the school district's ADM adjusted for school size determined under (A) of this paragraph is calculated as the district's ADM adjusted for school size, plus 75 percent of the difference in the district's ADM adjusted for school size between the base fiscal year and the first fiscal year after the base fiscal year;

(ii) for the second fiscal year after the base fiscal year determined under this subparagraph, the school district's ADM adjusted for school size determined under (A) of

this paragraph is calculated as the district's ADM adjusted for school size, plus 50 percent of the difference in the district's ADM adjusted for school size between the base fiscal year and the second fiscal year after the base fiscal year;

(iii) for the third fiscal year after the base fiscal year determined under this subparagraph, the school district's ADM adjusted for school size determined under (A) of this paragraph is calculated as the district's ADM adjusted for school size, plus 25 percent of the difference in the district's ADM adjusted for school size between the base fiscal year and the third fiscal year after the base fiscal year;

(F) the method established in (E) of this paragraph is available to a school district for the three fiscal years following the base fiscal year determined under (E) of this paragraph only if the district's ADM adjusted for school size determined under (A) of this paragraph for each fiscal year is less than the district's ADM adjusted for school size in the base fiscal year;

(G) the method established in (E) of this paragraph does not apply to a decrease in the district's ADM adjusted for school size resulting from a loss of enrollment that occurs as a result of a boundary change under AS 29;

(2) the required local contribution of a city or borough school district is the equivalent of a 2.65 mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110, not to exceed 45 percent of a district's basic need for the preceding fiscal year as determined under (1) of this subsection.

(c) In addition to the local contribution required under (b)(2) of this section, a city or borough school district in a fiscal year may make a local contribution of not more than the greater of

(1) the equivalent of a two mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110; or

(2) 23 percent of the total of the district's basic need for the fiscal year under (b)(1) of this section and any additional funding distributed to the district in a fiscal year according to (b) of this section.

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

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

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

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

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

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

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

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

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

**AS 29.35.160. Education.**

(a) Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation in a borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education and Early Development. However, operation of the military reservation schools by the borough school district may be required by the Department of Education and Early Development under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education and Early Development, operation, management, and control of schools on the military reservation transfers to the borough school district in which the military reservation is located.

## I. INTRODUCTION

Under Article VII, § 1 of the Alaska Constitution, the “legislature shall by general law establish and maintain a system of public schools open to all children of the state.” Public education serves broad societal interests to prepare children to participate in civic life by being able to vote, serve on juries, serve in the military, and participate in civic affairs of the community. Public education also prepares students to enter the workforce, to pursue careers, to further their education at the university level, and to pursue vocations, professions, and trades that sustain Alaska’s economy. Without an education, students cannot access the visual and performing arts. As Chief Justice Earl Warren wrote in *Brown v. Board of Education* about education:

Today it is a principal instrument in awakening a child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.<sup>1</sup>

Chief Justice Warren’s statements about the value of an education remain true sixty years later. The State of Alaska’s school funding program and distribution formula challenged in this case is a critical component in a system designed to provide adequate and equalized educational opportunities to all Alaskan children.

Contrary to the trial court’s erroneous decision below, funding education from local revenues to support local school district operations is a constitutionally mandated purpose for government, not a special purpose that violates the Anti-Dedication Clause provisions

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<sup>1</sup> *Brown v. Board of Education*, 347 US 482, 493 (1954).

in Article IX, § 7. Article IX, § 7 was intended to prohibit dedicated earmarks where the legislature exercised its taxing or appropriation power to earmark future revenue to a specific purpose. Because the Required Local Contribution (“RLC”) under AS 14.17.410(b) lacks the fundamental attributes of an earmark, the trial court erred in holding that the RLC is a “dedicated tax” under Article IX, § 7.

Moreover, in rejecting the local contribution component of Alaska’s school funding mechanism, the superior court gave no consideration to the State’s Article VII, § 1 mandate to establish and maintain a system of schools open to all of Alaska’s children. In order to create a fair and equitable funding mechanism for all schools in Alaska, whether located in a city, borough, or Regional Educational Attendance Area (“REAA”), the legislature exercised its power under Article VII, § 1 to require a minimum contribution from local communities that have taxing authority and a tax base. If the trial court’s ruling stands, an estimated \$221,114,072 for FY 2014 and \$228,831,942 for FY 2015 in required local contribution funding to the system will drop out of the distribution formula, thereby reducing the amount of education funding available to most Alaska school districts, and particularly those which serve Alaska’s neediest children. [Exc. 117; App. D, p. 1]

Under *Myers v. Alaska Housing Finance Corp.*,<sup>2</sup> the trial court should have weighed whether the Anti-Dedication Clause “clashed with” the legislature’s Article VII, § 1 mandate to provide a public education to all Alaskan children. In the event this case requires the Court to “choose between competing constitutional values,” the constitutional

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<sup>2</sup> *Myers v. Alaska Housing Finance Corporation*, 68 P.3d 386, 391-94 (Alaska 2003).

obligation of the legislature to provide an adequate education for Alaska's youth must prevail over the trial court's overbroad reading of the Anti-Dedication Clause.<sup>3</sup>

## **II. JURISDICTION**

This is an appeal from the November 21, 2014 Order on Motion and Cross Motion for Summary Judgment and the January 23, 2015 Final Judgment of the superior court, the Honorable William B. Carey. This Court has jurisdiction over this case under AS 22.05.010 and Appellate Rule 202(a).

## **III. PARTIES**

The State of Alaska and Michael Hanley, Commissioner of the Department of Education and Early Development (the "State") are the appellants/cross-appellees. The appellees/cross-appellants are Ketchikan Gateway Borough and four individuals: Agnes Moran, on her own behalf and on behalf of her son, John Coss, a minor; John Harrington; and David Spokely (collectively, Ketchikan Gateway Borough or "KGB").

## **IV. ISSUE PRESENTED**

The Dedicated Funds Clause of the Alaska Constitution, Article IX, § 7, prohibits the dedication of the "proceeds of any state tax or license" to any "special purpose." This clause was written to prevent earmarking of state revenue that would deprive future legislatures of control over state finances. AS 14.17.410(b)(2) requires that local communities with taxing authority help fund their schools. Does the longstanding requirement that local communities pay local dollars to their local schools violate the

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<sup>3</sup> *Id.* at 391-94.

Alaska Constitution's prohibition against dedicating the "proceeds of any state tax or license?"

## **V. STATEMENT OF THE CASE**

### **A. CEAAC and Its Membership**

Citizens for the Educational Advancement of Alaska's Children ("CEAAC") is a coalition of twenty-three member school districts and educators, originally incorporated in January 1998 to address the problem of aged and deteriorated schools in rural Alaska. Today, CEAAC and its member school districts and organizations comprise an estimated 63,026 Alaskan school children and over 12,000 educators. As an organization that represents school districts in incorporated municipalities as well as Rural Educational Attendance Areas ("REAA's") in remote communities, CEAAC is devoted to ensuring that the State meets its constitutional obligation to provide an appropriate public education for all Alaskan students.

CEAAC's role is unique as a membership organization that represents struggling schools and at-risk students. Alone among organizations in Alaska, CEAAC speaks for those who most need educational assistance from the State. With the exception of Anchorage, all of CEAAC's member districts are rural, and generally serve areas with limited local economic activity or taxable property. The majority of CEAAC's member districts are REAA's which lie outside of organized cities and boroughs, and lack any taxing authority.

CEAAC has previously participated in two significant cases involving school funding with statewide impact. In 1997, CEAAC challenged the State's method for

funding capital improvement projects as both a violation of the Equal Protection clause and the Education Clause of the Alaska Constitution. *See Kasayulie et al. v. State*, 3AN-97-03782 CI.<sup>4</sup> Under the State's capital improvements program for school facilities, borough and city districts with taxing authority received automatic reimbursement in the amount of 70% of any bonds issued for construction of school facilities. Funding of REAA capital improvements was subject to the vagaries of the legislative process. REAA school projects, although ranked in the top 10 statewide priorities for school construction, went unfunded year after year because of the political process. In his order on summary judgment, Superior Court Judge John Reese held that "facilities funding is an integral part of education and as such is inseparable from the state's obligation to establish and maintain a public education system."<sup>5</sup> The superior court granted summary judgment in favor of the plaintiffs, finding that the state's failure to provide adequate funding for school facilities in rural areas violated the education clause.<sup>6</sup>

More recently, in *Moore v. State*, 3AN-04-09756 CI, CEAAC participated in a 21-day trial before then-Superior Court Judge Sharon Gleason which challenged the adequacy of State funding to districts addressing the "achievement gap" between urban and rural students. The trial before Judge Gleason resulted in a thorough review of the State's school finance system, educational standards, the State's assessment system, and the State's obligation to provide assistance to local districts with a large percentage of chronically

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<sup>4</sup> See Appendix A.

<sup>5</sup> App. A, p. 4.

<sup>6</sup> *Id.*, pp. 6-10.

underachieving students. In her decision, Judge Gleason addressed in detail the foundation funding program and the distribution formula involving all available resources at issue in this case. Judge Gleason held that the State has a duty under Article VII, § 1 to provide adequate funding to school districts to insure that students have an a meaningful opportunity to achieve proficiency on the performance standards and meaningful exposure to the content standard.<sup>7</sup> Judge Gleason adopted a constitutional framework under the Education Clause that should be applied in considering the constitutionality of the RLC component of the distribution formula that the lower court found unconstitutional.

In the present case, the impact of the trial court's decision would be devastating for CEAAC and its members. CEAAC estimates that removal of the Required Local Contribution would take in excess of \$220,000,000 per year out of the State's foundation funding program. Removing this important source of revenue from the distribution formula would defeat the State's goal of providing adequate and equalized educational funding to all districts and will result in redistribution of state aid. While boroughs and cities may be able to account for such a loss through additional local taxation, rural communities in REAAs would not have that ability, and would inevitably sustain cuts that would reduce already stretched budgets to unacceptable levels of service. Due to the grave impact on CEAAC's member districts and the effect the trial court's erroneous decision would have on the quality of education statewide, CEAAC shares a deep interest in the outcome of this case.

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<sup>7</sup> Appendix B, pp. 178-184.

## **B. Background on Article VII, § 1 of the Alaska Constitution**

Under Article VII, § 1 of the Alaska Constitution, the State has established a system of local school districts with budgetary control and discretion over school funding. Prior to statehood in 1959, Alaska had a two-tiered or dual system of education.<sup>8</sup> The United States Bureau of Indian Affairs (“BIA”) operated one system for Alaska Native students, and the territorial legislature operated another system for non-Natives and those Natives leading a “civilized life.”<sup>9</sup> The framers of the Alaska Constitution recognized that this dual system must end and that the new state must establish a single, unified system for all of Alaska’s children. It was with this fundamental purpose that our constitutional framers proposed the adoption of Alaska’s Education Clause, which directs the legislature to “establish” and “maintain” a system of public schools.<sup>10</sup>

## **C. The State Delegates Education to Local School Districts**

Like other states, Alaska has established an educational system based principally on a system of locally controlled school districts. The legislature created three basic types of school districts. Alaska has 16 organized boroughs, each of which is a school district.<sup>11</sup> In addition, there are 18 home rule or first class cities outside a borough, and each one of these is also a district.<sup>12</sup> The rest of Alaska is divided into 19 REAAs, each of which is a school

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<sup>8</sup> *Hootch v. Alaska State-Operated School System*, 536 P.2d 793, 800 (Alaska 1975).

<sup>9</sup> *Id.*

<sup>10</sup> See Alaska Const., art. VII, § 1.

<sup>11</sup> AS 14.12.010.

<sup>12</sup> AS 14.12.010(2).

district.<sup>13</sup> REAAs are unusual because they exist outside any organized city or borough. Another unique aspect of REAA school districts is that they have no access to local funding, as there is no local government with taxing power. REAAs primarily serve Alaska Native regions which are often reliant on a subsistence economy, with little or no tax base.

Each borough constitutes a borough school district that establishes, maintains and operates a system of schools on an areawide basis as provided in AS 14.14.060.<sup>14</sup> Under AS 14.14.060, the legislature established the relationship between a borough school district and the borough with regard to finances and buildings. AS 14.14.060(c) provides the borough assembly with oversight and approval over the total amount of the school district's budget on an annual basis. After receipt of the budget, the borough assembly has 30 days within which it "shall determine the total amount of money to be made available from local sources for school purposes and shall furnish the school board with a statement of the sum to be made available."<sup>15</sup> The borough school board's budget is subject to an annual appropriation from the borough assembly and subject to the political process of review by the borough's mayor. The Ketchikan Gateway Borough ("KGB") School District budget approval process follows this model.<sup>16</sup> [Exc. 088] Like other borough and city school districts, the KGB School District has complete discretion over its budget.<sup>17</sup>

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<sup>13</sup> AS 14.12.010(3).

<sup>14</sup> AS 29.35.160(a).

<sup>15</sup> AS 14.14.060(c).

<sup>16</sup> KGB Code Section 2.35.050.

<sup>17</sup> *Tunley v. Municipality of Anchorage*, 631 P.2d 67, 76 (Alaska 1988).

**D. The State's Educational Funding System Funding Sources and Distribution Formula**

The State funds local school districts from three sources of revenue: state aid, federal impact aid, and local revenues.<sup>18</sup> State aid is distributed through a public education fund which consists of appropriations for funding school districts in accordance with the state foundation program. The foundation program takes into account revenues from the federal government and the local communities with a tax base through a distribution formula.

Federal impact aid is provided to school districts to compensate for the district's inability to tax certain federal and Alaska Native lands.<sup>19</sup> If the State's system of education funding meets a federal equalization test, the State is allowed to consider this federal aid in the State's distribution formula to school districts.<sup>20</sup> REAA school districts generate substantial impact aid. For example, the Lower Kuskokwim School District generated \$17,622,665 in federal impact aid for FY-2014. [Exc. 117] The State deducts 90% of this amount in lieu of local tax funding in determining the amount of state aid each REAA receives.<sup>21</sup>

The local source of funding that is factored into the State's distribution formula is based on a borough's or city's personal and real property tax base.<sup>22</sup> Under Article X, § 2

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<sup>18</sup> AS 14.17.410(b).

<sup>19</sup> AS 14.17.300 – .490.

<sup>20</sup> App. B, p. 24, ¶ 47.

<sup>21</sup> AS 14.17.410(b)(1).

<sup>22</sup> AS 14.17.410(b)(2).

of the Alaska Constitution, the State delegated “taxing powers” to organized boroughs to support areawide and special services, like education.<sup>23</sup> The local required effort to support local schools is the “equivalent of a 2.65 mill tax levy on the full and true value of the taxable real and personal property in the district as determined by the Department of Commerce, Community, and Economic Development.”<sup>24</sup> The foundation formula also caps the amount of a local contribution in order to equalize the revenues available to school districts on a statewide basis and to meet the federal equalization test under Public Law 874. [Exc. 059]

To determine a school district’s eligibility for state aid from the public education fund, the foundation distribution formula allocates state funds to school districts based on the weighted number of students enrolled in a district. The weighted average daily membership is multiplied by the base student allocation to determine the district’s basic need.<sup>25</sup> Adjustments are made to each school district’s allocation to account for differences in district size and geographic location. Smaller school districts with smaller schools receive more because they lack the economies of scale of the larger districts. In addition, schools in remote locations receive more funding to account for the extraordinarily high costs of attracting teachers, energy and transportation, and other operating needs for schools in these locations. Each district’s allocation is then multiplied by a special needs factor, set by statute. All districts receive the same special needs adjustment regardless of

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<sup>23</sup> Article X, § 2.

<sup>24</sup> AS 14.17.410(b).

<sup>25</sup> AS 14.17.410.

the actual number of special needs students in the district. Finally, adjustments are made for students who require intensive services and correspondence students based on the number of students actually receiving these services.<sup>26</sup>

**E. The Purpose of the Alaska Public School Foundation Program and Funding Formula is to Provide Adequate Funding and to Equalize Revenues Available to School Districts**

The recent history of public school funding in Alaska and the purposes of the foundation program were chronicled in a report to the legislature dated January 15, 2001. In 1998, the legislature passed Senate Bill 36, which made significant changes to the foundation system and funding formula.<sup>27</sup> The formula changed from funding on a community basis to a per school funding model. With the adoption of these changes, the legislature required the Department of Education and Early Development (“DEED” or the “Department”) to report to the legislature on the impact of the funding changes. [Exc. 049]<sup>28</sup>

In the introduction to the report comparing the old funding community-based formula to the new school-based funding formula, the Department points out that Alaska’s funding formula has required adjustments based on the following factors:

1. Sparseness and size of student population;
2. Special needs or categorical findings;
3. Regional cost differences;

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<sup>26</sup> AS 14.17.300 – .490.

<sup>27</sup> See SLA 1998, Ch. 83.

<sup>28</sup> In the proceedings below, the trial court was provided with selected sections of the report to the legislature. Appendix C to this brief is a complete copy of the report, including each of the separate sections of the report: Tab 1 – District Cost Factors, Tab 2 – Comparison of Old to New Funding Formula, and Tab 3 – Educational Adequacy.

4. Equalization; and
5. Supplemental funding floor.

Each of these factors requires ongoing monitoring in order to ensure that the State is providing adequate funding. [Exc. 052]

With regard to the goal of equalizing funding between districts statewide, the report described that the goal of the formula is to provide each district with “basic need” or the resources necessary to provide adequate educational opportunity for each school district. The report explains that “funding components of Basic Need include required local effort, federal impact aid, and state aid.” [Exc. 059] The report goes on to explain that the State must meet a “federal equalization test known as the ‘disparity test’ in order to consider federal impact aid dollars in the public school funding formula.” [*Id.*] In order to meet the federal equalization disparity test, wealthy districts in a state may not have “more than a 25% increased per pupil revenue over the poorest district in the state.” [*Id.*] The current funding formula was designed specifically to measure and equalize revenues from all sources, including locally generated revenue and federal impact aid funds.

**F. Removing the Required Local Contribution from the Public School Funding Formula**

The purpose of the school finance system is to provide sufficient revenues to assure that all students are afforded the opportunity to meet or exceed Alaska’s performance standards. By declaring that the local contribution from the Ketchikan Gateway Borough School District is unconstitutional, the court’s decision will upend the legislature’s goals of equalizing funding available to students across the state and providing for adequate

funding for all students, regardless of whether they reside in incorporated cities or boroughs, or in remote REAAs.

For FY 2014, the Ketchikan Gateway Borough School District's required local contribution was \$4,198,727. [Exc. 021, 117] In addition to this required local contribution, the Ketchikan Gateway Borough provided an extra \$3,851,273 in funding to its borough school district. [Exc. 022] On a statewide basis, the total required local effort for FY 2014 was \$222,114,072. [Exc. 117] The projected minimum required local effort for FY-2015 as determined by the Alaska Department of Education and Early Development closeout report is \$228,831,942. [App. D, p. 1]

The Ketchikan Gateway Borough School District made the FY-2014 local contribution payment under protest. The borough demanded a payment of an equal amount from the State treasury as it was paying in protest because of the required local contribution under the foundation program. However, if the local contribution requirement is no longer available in determining the state aid entitlement to a school district, the effect will be to remove all required local contributions from all borough and city school districts from the foundation program. If the remaining provisions of the foundation program remain in effect and only the local contribution is declared unconstitutional, the State will distribute state aid on a pro rata basis.

AS 14.17.400(b) provides that if the amount appropriated to the public education fund is insufficient to fund state entitlement under AS 14.17.410, then "the department shall reduce pro rata each district's basic need by the necessary percentage as determined

by the department.”<sup>29</sup> The result of a pro rata reduction in each district’s basic need due to elimination of the RLC will be a substantial redistribution of state aid. REAA school districts and small city districts with little local property wealth will likely see reductions in their state aid ranging from 15% to 30%. In addition to a redistribution of available state aid, the State would probably no longer be able to meet the federal impact aid equalization test, and so that component of the foundation program would also be in jeopardy. Based on the redistribution of state revenues that would occur as a result of removing the required local contribution from the public funding formula, the legislature would be faced with either having to backfill the funding formula with additional state revenue to make up for the loss of the required local contribution or to rewrite the public school funding formula at a time of substantial budget deficits.

#### **G. State Oversight of School Spending and Expenditures**

Within the confines of the state funding mechanism discussed above, local school districts, including the KGB School District, retain substantial authority to deciding how to allocate their budgets and operate local schools. The State retains limited oversight with regard to how school districts expend funds. School districts are required to submit a budget each fiscal year to DEED.<sup>30</sup> State laws also require the school districts to submit an annual independent audit of all school accounts for the school year.<sup>31</sup> The State also requires that each school district budget for and spend “a minimum of 70% of its school

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<sup>29</sup> AS 14.17.400(b).

<sup>30</sup> 4 AAC 09.110(a).

<sup>31</sup> AS 14.14.050.

operating expenditures ... on the instructional component of the district budget,” unless the district is granted a waiver from the State.<sup>32</sup> The term “instructional component” is defined as “expenditures for teachers and for pupil support services.”<sup>33</sup> Within these limited standards, local school districts have complete discretion to determine how to allocate general fund revenues for purposes of delivering educational services to meet the needs of the students and community the district serves.

## **VI. SUMMARY OF ARGUMENT**

### **A. General Fund Revenues for Local School Districts is Not an Earmark or Dedicated Tax in Violation of Article IX, § 7**

The trial court erred in concluding that the RLC in AS 14.17.410(b) runs afoul of the Anti-Dedication Clause. The test that derives from this Court’s precedent is that a statute violates the Anti-Dedication Clause only if it contains two fundamental attributes:

(1) either (a) the exercise of the legislature’s taxing power to establish a future stream of revenue; or (b) exercise of the legislature’s appropriation power to dedicate a state asset or property; and (2) the dedication of the revenue stream or asset for a specific purpose.

Because the RLC is not an exercise of taxing or appropriation power, and because it does not earmark any specific fund or asset to a specific group or for a specific purpose, it is constitutionally sound. The trial court erred in concluding otherwise.

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<sup>32</sup> AS 14.17.520.

<sup>33</sup> AS 14.17.520(f).

**B. The State's Foundation Funding Program is an Exercise of the State's Power Under Article VII, § 1 to Establish and Maintain a System of Schools**

Article VII, § 1 of the Alaska Constitution provides a clear mandate requiring the State to provide an appropriate public education for all of Alaska's children. However, Article VII does not specify a source of funds to "establish and maintain" a system of public education open to the children of Alaska.<sup>34</sup> Rather, the framers vested discretion in the legislature to determine the appropriate funding mechanism to satisfy this constitutional mandate.

The Alaska Legislature exercised its discretion under Article VII by establishing a three-layer funding mechanism which strives to allocate a fair and equitable amount of resources to each school district in Alaska based on that district's unique needs. In keeping with the history of education in the State, there are three revenue sources for funding schools: state, federal and local revenues. The foundation formula adopted by the State draws on revenue from all three revenue sources.

In order to ensure adequate funding for local schools in boroughs and cities in accordance with the mandate of Article VII, § 1, the legislature requires a minimum local revenue contribution from local communities that is approved by the borough assembly and goes into the school district's general fund. There is no dedication or designation by the State as to how the local revenues must be spent for any special purpose in violation of the Dedication Clause.

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<sup>34</sup> See Alaska Const., art. VII, § 1.

The foundation distribution formula directs only that the contribution be made to the borough school district governed by its own legislative body. The borough school district has complete control and discretion over how school district general fund revenues are spent.<sup>35</sup> For these reasons, the trial court erred in concluding that the RLC runs afoul of the dedicated tax clause of Article IX. Indeed, to accept KGB's arguments would create a conflict between the Anti-Dedication Clause of Article IX and the mandate to provide a public education to all Alaskan children under Article VII, § 1. In the event this case requires the Court to "choose between competing constitutional values," the obligation of the legislature to provide an adequate education for Alaska's youth must prevail over the trial court's overbroad reading of the Anti-Dedication Clause.<sup>36</sup>

## VII. STANDARD OF REVIEW

This case requires the Court to determine if AS 14.17.410(b) violates Article IX, § 7 of the Alaska Constitution. This Court uses its independent judgment to decide constitutional issues.<sup>37</sup> On questions of law, this Court will "adopt the rule of law that is most persuasive in light of precedent, reason, and policy."<sup>38</sup>

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<sup>35</sup> *Tunley v. Municipality of Anchorage*, 631 P.2d 67, 76 (Alaska 1980).

<sup>36</sup> *Myers v. Alaska Housing Finance Corp.*, 68 P.3d 386, 391-94 (Alaska 2003).

<sup>37</sup> *See id.* at 389.

<sup>38</sup> *City of Fairbanks v. Fairbanks Convention and Visitors Bureau*, 818 P.2d 1153, 1156 (Alaska 1991) (quoting *Guin v. Ha*, 591 P.2d 1281, 1284 n.6 (Alaska 1979)).

## VIII. ARGUMENT

### A. The Required Local Contribution for Funding Borough Schools Is Not a Dedicated Tax in Violation of Article IX, § 7

The trial court misapplied this Court's prior precedent in concluding that the RLC in AS 14.17.410(b) runs afoul of the Anti-Dedication Clause. The test that derives from this Court's precedent is that a statute violates the Anti-Dedication Clause only if it contains two fundamental attributes:

(1) either (a) the exercise of the legislature's taxing power to establish a future stream of revenue; or (b) exercise of the legislature's appropriation power to dedicate a state asset or property; and (2) the dedication of the revenue stream or asset for a specific purpose.

In other words, the Anti-Dedication Clause prohibits earmarking future revenue. Because the RLC is not an exercise of the State's taxing or appropriation power, and because it does not earmark any specific fund or asset to a specific group or for a specific purpose, it is constitutionally sound. The trial court erred in concluding otherwise.

This Court first considered the Anti-Dedication Clause in *State v. Alex*.<sup>39</sup> That case dealt with an act creating and dedicating a special assessment on the sale of salmon in order to fund regional aquaculture associations. This Court concluded that the assessments were "an exercise of the [legislature's] taxing power, the purpose of which is to raise revenue to construct hatcheries."<sup>40</sup>

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<sup>39</sup> *State v. Alex*, 646 P.2d 203 (Alaska 1982).

<sup>40</sup> *See id.* at 211.

In concluding that the special salmon assessment violated the Anti-Dedication Clause, this Court examined the origin of the clause in the Alaska Statehood Commission's studies and in the minutes of the Alaska Constitutional Convention. The fundamental evil that the Anti-Dedication Clause was designed to address was the "earmarking or dedication of certain revenue for specified purposes or funds" because tying up future revenue streams with earmarks created a "severe obstacle to the scope and flexibility of budgeting."<sup>41</sup> *Alex* establishes that the legislature violates the Anti-Dedication Clause when it (1) exercises its taxing power to create a revenue stream; and (2) expressly dedicates that revenue to a specific purpose in a manner that is final and mandatory, leaving no room for further legislative discretion.

In *Sonneman v. Hickel*, this Court returned to the Anti-Dedication Clause.<sup>42</sup> That case involved a challenge to the act that created the Alaska Marine Highway System Fund. The statute created a special account in the general fund and provided that the legislature "may appropriate" amounts from the fund to the marine highway system for capital improvements if certain conditions are met.<sup>43</sup> The statute also allowed the Department of Transportation to request appropriations from the fund, but placed a limitation on the percentage of the fund that the executive branch could request for annual appropriation.

This Court held that the establishment of the Marine Highway System Fund did not violate the Anti-Dedication Clause. The statute provided that the legislature "may

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<sup>41</sup> *Id.* at 209-10.

<sup>42</sup> *Sonneman v. Hickel*, 836 P.2d 936 (Alaska 1992).

<sup>43</sup> *See id.* at 938.

appropriate” amounts from the fund to the marine highway system. This Court held that the use of the permissive word “may” meant that the legislature was also free *not to* appropriate money from the fund to the marine highway system, and so was free to appropriate the fund to any other purpose.<sup>44</sup> Thus, the statute was merely a legislatively mandated system of accounting, but not a dedication of money “for a special purpose.”<sup>45</sup> For these reasons, the Court held that the establishment of the fund did not violate the Anti-Dedication Clause.

The *Sonneman* Court did strike one subsection of the statute that contained limitations on the Department of Transportation’s ability to ask for funds from the Marine Highway System Fund, holding that the Anti-Dedication Clause was intended to protect the flexibility of both the legislature and government departments to request funds from all sources and to participate in the annual appropriation process.<sup>46</sup>

*Sonneman* establishes that even where the legislature uses its power of the purse to dedicate a special fund for a particular state goal (*i.e.*, transportation), that action alone is permissible under the Anti-Dedication Clause so long as there is no final mandate as to how the fund is appropriated on an annual basis.

This Court next considered the Anti-Dedication Clause in *Myers v. Alaska Housing Finance Corporation*.<sup>47</sup> That case involved the State’s sale of the future income from a

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<sup>44</sup> See *id.* at 939-40.

<sup>45</sup> *Id.* at 940.

<sup>46</sup> See *id.* at 940-41.

<sup>47</sup> *Myers v. Alaska Housing Finance Corp.*, 68 P.3d 386 (Alaska 2003).

tobacco settlement to the Alaska Housing Finance Corporation and its subsidiary to finance rural school improvements. This Court upheld the sale as constitutional, holding that the legislature's authority to appropriate an asset included the ability to sell a future revenue source, that a lawsuit was not a traditional source of public revenue for the State, and that the legislature had a duty to manage the State's risk.<sup>48</sup>

The Court observed that if the legislature had merely dedicated the lawsuit's settlement revenue to a specific purpose, such a designation of a future revenue stream would violate the Anti-Dedication Clause. But the Court concluded that the Anti-Dedication Clause "clashes with the legislature's appropriation power" and that the legislature's obligations to manage the state's assets effectively prevailed over the Anti-Dedication Clause.<sup>49</sup>

This Court most recently considered the Anti-Dedication Clause in *Southeast Alaska Conservation Council v. State*.<sup>50</sup> The Court held that the transfer of state lands to the University of Alaska, with the proviso that revenue from the lands be deposited in the university's endowment account, violated the Anti-Dedication Clause. The Court first concluded that proceeds from state land are "proceeds from any state tax or license" as that phrase is used in the Anti-Dedication Clause. Therefore, the Court concluded that transferring a state asset to support an endowment fund was contrary to the Anti-Dedication Clause.

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<sup>48</sup> See *id.* at 393-94.

<sup>49</sup> *Id.* at 394.

<sup>50</sup> *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162 (Alaska 2009).

From the four cases discussed above, it is clear that for a statute to violate the Anti-Dedication Clause, there must be (1) either (a) the exercise of the legislature’s taxing power to establish a future stream of revenue;<sup>51</sup> or (b) exercise of the legislature’s appropriation power to dedicate a state asset or property;<sup>52</sup> and (2) the dedication of the revenue stream or asset for a specific purpose. The trial court erred in holding that the RLC violates the Anti-Dedication Clause because it meets neither part of this test.

**1. The RLC Does Not Implicate the Proceeds of Any State Tax or License because the Legislature Has Not Exercised Its Taxing or Appropriation Powers to Create a Future Stream of Income**

The purpose of the Anti-Dedication Clause is to protect the legislature’s authority to appropriate the state’s income and assets.<sup>53</sup> When the legislature uses its taxing authority to create a future revenue stream and then dedicates that stream to a specific purpose, such action impairs the legislature’s freedom and flexibility in the annual budgeting process.<sup>54</sup> Likewise, if the legislature uses its appropriation power to transfer a revenue-generating asset to a specific purpose, it runs afoul of the Anti-Dedication Clause by locking up the asset in a manner that impairs the range of possible uses of the same asset.<sup>55</sup> While this Court has taken a broad view of the definition of “state tax or license” in the Anti-

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<sup>51</sup> See *State v. Alex*, 646 P.2d 203 (Alaska 1982) (legislature exercised its taxing power in establishing special salmon assessment); *Sonneman v. Hickel*, 836 P.2d 936 (Alaska 1992) (legislature exercised its taxing power in creating the Marine Highway Fund).

<sup>52</sup> See *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162 (Alaska 2009) (legislature appropriated state assets to a dedicated endowment fund).

<sup>53</sup> See *Alex*, 646 P.2d at 209-10.

<sup>54</sup> See *id.*

<sup>55</sup> See *Southeast Alaska Conservation Council*, 202 P.3d at 1177.

Dedication Clause, the consistent element has always been an exercise of the legislature's taxing or appropriation power to create a future stream of revenue and then dedicate that revenue to a special purpose.

The RLC is simply not a "state tax or license." The legislature neither exercises its taxing power nor appropriates a state asset. Rather, AS 14.17.410 merely establishes a minimum amount of local contributions required for the community to be eligible to receive state funds. Since the statute exercises no taxing or appropriation power, it does not impair the legislature's freedom to exercise those powers during the annual appropriation process. Thus, the RLC violates neither the letter nor the purpose of the anti-Dedication Clause.

The trial court erred in interpreting the phrase "state tax or license" in the Anti-Dedication Clause to include any source of public fund revenue, even if those funds belong otherwise not to the State but to a local government entity. The trial court's overbroad reading of "state tax or license" is problematic. The entire purpose of the Anti-Dedication Clause was to give the legislature the freedom to meet its constitutional obligations to fund and operate state government. But rather than protect the legislature's authority, the trial court's decision does the reverse by hamstringing the legislature and preventing it from encouraging local community financial support for school districts.

## **2. The RLC Is Not a Dedication**

The trial court also erred in concluding that AS 14.17.410 creates a "dedication" in violation of the Anti-Dedication Clause. The statute does not dictate how funds are to be spent, but only that a required minimum contribution be made to the local school board as

a condition for receipt of state funds.<sup>56</sup> Any funds contributed by the Ketchikan Gateway Borough to its school district are placed in the district's general fund, and then subject to annual appropriation by the elected school board.

This Court's prior Anti-Dedication Clause decisions have not required that the Court expressly define the word "dedication." But this Court has repeatedly defined the word "appropriation" as used in the ballot initiative subject matter restrictions of Article XI, Section 7 of the Alaska Constitution. That section serves a similar purpose to the Anti-Dedication Clause, in that it was intended to "ensure that the legislature, and *only* the legislature, retains control over the allocation of state assets among competing needs."<sup>57</sup> In *City of Fairbanks v. Fairbanks Convention and Visitors Bureau*, this Court reasoned that "[b]ecause the language of these two provisions is similar, we adopt a similar analysis of the meaning of each provision and the purposes behind them."<sup>58</sup> To be an appropriation, a statute must "set aside a certain specified amount of money or property for a specific purpose or object in such a manner that is executable, mandatory, and reasonably definite with no further legislative action."<sup>59</sup> This same definition should apply to a "dedication" in the Anti-Dedication Clause.

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<sup>56</sup> See AS 14.17.410(b).

<sup>57</sup> *City of Fairbanks v. Fairbanks Convention and Visitors Bureau*, 818 P.2d 1153, 1157 (Alaska 1991) (quoting *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 88 (Alaska 1988)).

<sup>58</sup> *Id.* at 1158.

<sup>59</sup> *Id.* at 1157.

This Court's prior decisions confirm that the "executable, mandatory, and reasonably definite" test is precisely the level of firm and final commitment of funds that is required to offend the Anti-Dedication Clause. Thus, in *Alex* the legislature created an improper earmark when it exercised its taxing authority to establish a future revenue stream with a special assessment on salmon and directed that the proceeds could only be used to fund regional aquaculture associations and only for salmon propagation. But in *Sonneman* there was no constitutional violation because even though the legislature used its power of the purse to create the Alaska Marine Highway Fund, the statute did not include any final or binding directive as to how the Fund was to be spent. These cases support the conclusion that an improper earmark under the Anti-Dedication Clause requires a legislative set aside of money or property for a specific purpose in such a manner that is executable, mandatory, and reasonably definite with no further legislative action.

The RLC is not such an earmark. As discussed above, the statute does not set aside state money or property. And it does not require an expenditure in a manner that is "executable, mandatory and reasonably definite with no further legislative action." To the contrary, any local funds contributed by the Ketchikan Gateway Borough are provided to its elected school board and then subject to that government body's annual appropriation process. Because the RLC leaves further room for legislative appropriation by the borough's school board, it is not a dedication of funds.

In two different cases, this Court has addressed the relationship of the borough's school board and the borough itself under state law. In *Tunley v. Municipality of*

*Anchorage*,<sup>60</sup> the parents of students living on Government Hill challenged the school district's proposed closure of two neighborhood schools. The parents argued that under Article VII of the Alaska Constitution, the Anchorage School District could not close the schools without the State's review and consent. The Court reasoned that "the Anchorage School Board was created by the authority of the state legislature, and is the delegated state authority to govern its school district and manage the operations of the schools within that district."<sup>61</sup> The Court went on to explain that "[h]istorically, Americans have considered schools to be an extension of the local community. Thus, although state legislatures possess plenary power over the educational system, local initiative with respect to education is so highly regarded that most states have delegated extensive authority over the actual administration of schools to local institutions."<sup>62</sup> With regard to school board budgetary control, the Court stated:

Nowhere is the independent status of the Anchorage School Board more apparent than in school system budgetary matters. ... the assembly has no legislative power to make appropriations for specific items, programs or priorities provided for by the school board's budget. Instead, "(t)he Assembly may increase or decrease the budget of the School District only as to total amount." Anch.Mun.Charter § 6.05(b); Anch.Mun.Code § 29.20.030.<sup>63</sup>

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<sup>60</sup> *Tunley v. Municipality of Anchorage*, 631 P.2d 67 (Alaska 1980).

<sup>61</sup> *Id.* at 75.

<sup>62</sup> *Id.* at 75 n.17.

<sup>63</sup> *Id.* at 75-76.

In *Municipality of Anchorage v. Repasky*,<sup>64</sup> this Court again addressed the scope of the Education Clause in reviewing whether the Anchorage mayor could veto components of the school district's budget. The Court found no reason to insulate school board annual budget approval from the political process. In concluding that the mayoral veto power under Anchorage's home rule charter was not in conflict with the State's pervasive authority over education under Article VII, the Court found that the mayor's veto power was not irreconcilable with state law. In so finding, the Court held that the mayoral veto power was not irreconcilable because such action "in our view does not detract from the school board's role in proposing a budget, deciding how to spend amounts appropriated and setting educational policy, or administering expenditures after appropriation."<sup>65</sup> In these two decisions, the Alaska Supreme Court recognized that borough school districts have the budgetary independence and discretion to decide how to spend district funds to further education policies and goals. Because the RLC still leaves the elected school board in the KGB with maximum flexibility as to how to spend local funds on an annual basis, the RLC statute is not an earmark or dedication.

For the foregoing reasons, the trial court erred in finding that AS 14.17.410(b) runs afoul of the Anti-Dedication Clause of the Alaska Constitution.

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<sup>64</sup> *Municipality of Anchorage v. Repasky*, 34 P.3d 302 (Alaska 2001).

<sup>65</sup> *Id.* at 313.

**B. The Required Local Contribution Is a Proper Exercise of Constitutional Authority Under the Legislature's Obligations in Article VII, § 1 to Establish and Provide a System of Public Education**

As explained above, the RLC is not an earmark and so does not violate the Anti-Dedication Clause. In the alternative, the trial court erred in not considering the State's obligations under Article VII, § 1 of the Alaska Constitution and whether there were competing constitutional obligations as in *Myers v. Alaska Housing Finance Corporation*.<sup>66</sup> The Anti-Dedication Clause was intended to protect the legislature's power of the purse, not to hamstring the legislature and prevent it from meeting one of the essential constitutional obligations of state government.

Article VII, § 1 provides that "the legislature shall by general law establish and maintain a system of public schools open to all children of the state."<sup>67</sup> As explained below, the obligation to "establish and maintain a system of public schools" necessarily requires the legislature to provide adequate funding, accountability, and oversight of local school districts. The RLC in AS 14.17.410(b) is a proper exercise of this constitutional authority. In resolving a clash between the Education Clause in Article VII and the Anti-Dedication Clause in Article IX, the Education Clause must prevail in order to allow the legislature to meet its core obligations to educate Alaska's children.

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<sup>66</sup> *Myers v. Alaska Housing Finance Corp.*, 68 P.3d 386, 391-94 (Alaska 2003).

<sup>67</sup> Alaska Const., art. VII, § 1.

**C. Article VII, § 1 Gives the Legislature Pervasive Authority in the Field of Education**

The Alaska Supreme Court has addressed the scope and breadth of the State's obligations under the Education Clause on several occasions. The most famous of these cases is *Molly Hootch v. Alaska State-Operated School System*.<sup>68</sup> In *Molly Hootch*, the Alaska Supreme Court reviewed the history of the delivery of education in Alaska prior to the constitutional convention. Prior to statehood, there was a dual system of education in Alaska. The U.S. Bureau of Indian Affairs operated schools for Alaska Natives and the Alaska territorial government operated schools attended primarily by non-Natives. The delegates to the Alaska constitutional convention agreed that this dual system of education should be ended. In reviewing this constitutional convention history, the Alaska Supreme Court held that “[i]n view of this history, we conclude that art. VII, § 1 was intended to ensure that the legislature establish a system of education designed to serve children of all racial backgrounds.”<sup>69</sup>

The plaintiffs in *Molly Hootch* were students who resided in small rural communities where the State did not provide any secondary schools for the students to attend. The students sought a construction of the Alaska constitutional phrase “open to all” that would have created a right to be educated in their own community. The Court recognized that “the drafters of the constitution had in mind the vast expanses of Alaska, its many isolated small communities which lack effective transportation and

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<sup>68</sup> *Hootch v. Alaska State-Operated School System*, 536 P.2d 793 (Alaska 1975).

<sup>69</sup> *Id.* at 801.

communication systems, and the diverse culture and heritage of its citizens.”<sup>70</sup> The Court concluded that the Education Clause did not require a uniform system but did embody a requirement of non-segregated schools. In rejecting the plaintiffs’ contention that there was a right to attend a school in a village of one’s residence, the Court found that Article VII, § 1 “appears to contemplate different types of educational opportunities including boarding, correspondence and other programs without requiring that all options be available to all students.”<sup>71</sup> The Court concluded that Article VII, § 1 permits some differences in the manner of providing education and “that different approaches are appropriate to meet the educational needs in the diverse areas of the state.”<sup>72</sup>

Prior to the *Molly Hootch* case, the Court recognized the constitutional mandate contained in Article VII, § 1 and the State’s pervasive authority in the field of education. In *Macauley v. Hildebrand*,<sup>73</sup> the Juneau Borough had adopted an ordinance that required the local school district to participate in a centralized accounting system so that the borough could control the expenditure of school district funds. The Juneau school board objected because it had not consented to a centralized treasury as required under AS 14.14.060(b). The State legislature had established the scope and nature of the relationship between the borough school board and the borough assembly with regard to accounting systems for the borough school board. The Alaska Supreme Court affirmed the trial court’s decision

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<sup>70</sup> *Id.* at 803.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Macauley v. Hildebrand*, 491 P.2d 120 (Alaska 1971).

granting a permanent injunction against the borough restraining it from requiring the school district to participate in its centralized accounting system. With respect to Article VII, § 1, the Court held as follows:

This constitutional mandate for pervasive state authority in the field of education could not be more clear. First, the language is mandatory, not permissive. Second, the section not only requires that the legislature “establish” a school system but also gives to that body the continuing obligation to “maintain” the system. Finally, the provision is unqualified; no other unit of government shares responsibility or authority. That the legislature has seen fit to delegate certain educational functions to local school boards in order that Alaska schools might be adapted to meet the varying conditions of different localities does not diminish this constitutionally mandated state control over education.<sup>74</sup>

The next case of statewide importance for the state system of education involved a tax equity suit brought by boroughs challenging the system for funding capital projects for education.

In *Matanuska-Susitna Borough School District v. State*,<sup>75</sup> a tax equity suit was brought by individual taxpayers, parents, and borough school districts challenging the State’s system for funding new school capital construction projects and major maintenance projects. The plaintiffs asserted an equal protection claim because under the capital projects funding mechanism in effect at the time, borough school districts could issue bonds for new school construction and receive debt reimbursement on those bonds in the amount of 70%.<sup>76</sup> On the other hand, REAA districts received state funding in the amount

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<sup>74</sup> *Id.* at 122.

<sup>75</sup> *Matanuska-Susitna Borough School District v. State*, 931 P.2d 391 (Alaska 1997).

<sup>76</sup> AS 14.11.005-.019.

of approximately 98% for new school construction approved by the State of Alaska under the capital improvements program. The plaintiffs maintained they were denied equal educational opportunity but failed to show that there were any disparities in educational opportunities available to students as a result of the difference in the capital improvements mechanism.

In conducting an equal protection analysis, the Court found that construction funding was an economic interest and at the low end of the continuum of interests protected by the Equal Protection Clause. The Court concluded that the State's objectives in its public school foundation program "to assure an equitable level of educational opportunities for those in attendance in the public schools of the state" was a legitimate objective.<sup>77</sup> The Court cited to Article VII, § 1 and its constitutional mandate to the legislature to "ensure equitable educational opportunities across the state." The Court went on to hold as follows:

Given the differences in constitutional status between REAAs and borough and city districts, we hold that the legislative decision to exempt REAAs from the local contribution requirement, while requiring contributions from borough districts, was substantially related to the legislature's goal of ensuring an equitable level of educational opportunity across the state.<sup>78</sup>

Based on the State's constitutional obligation to establish and maintain a system of schools, the legislature is obligated to ensure adequate funding for borough, city and REAA districts under the Education Clause. The RLC is an appropriate exercise of the State's

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<sup>77</sup> *Matanuska-Susitna Borough School District*, 931 P.2d at 399.

<sup>78</sup> *Id.* at 400.

constitutional authority under Article VII to allocate available resources to provide for equalized and adequate funding for all school districts in the state.

**D. Article VII, § 1 Requires the State to Provide Adequate Funding to School Districts, Including a Local Contribution Requirement Effort Where the Local School District Has Taxing Authority and a Tax Base**

A critical component of the legislature's obligation under the Education Clause is that it must provide adequate and equalized funding for public education, and must also provide for accountability and oversight to ensure that local school districts are meeting the core purpose of the constitution's Education Clause.

In 2006, then-Superior Court Judge Sharon Gleason conducted a 21-day trial over the adequacy of state funding to students in rural school districts in both REAA districts and borough districts. Parents, students, and REAA districts filed suit against the State contending that it had failed its obligation to provide adequate funding under Article VII, § 1 of the Constitution. In the course of the 21-day trial, Judge Gleason heard testimony from 28 witnesses. There were over 800 exhibits admitted at trial and there was deposition testimony and exhibits of an additional 23 witnesses. At the conclusion of the proceedings, the parties submitted proposed findings of fact and conclusions of law totaling 288 pages. The trial transcript in the case totaled nearly 4,000 pages.<sup>79</sup> The primary contention of the plaintiffs was that the enormous achievement gap between urban and rural students was a product of inadequate funding in rural districts.

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<sup>79</sup> App. B, pp. 8-9.

Before the trial commenced, Judge Gleason held that it is “the court’s responsibility to determine a constitutional floor with respect to educational adequacy and to determine if that constitutional floor is currently being met.”<sup>80</sup> Judge Gleason ruled that “the focus at trial with respect to this claim should be on defining the constitutional right to an education under Alaska’s Constitution and determining whether the schools that have been established and maintained fulfill that constitutional right.”<sup>81</sup> After careful and thorough consideration of the evidence, Judge Gleason rendered a 196-page Decision and Order.

Judge Gleason found that the State had a constitutional duty to insure that an acceptable educational opportunity is provided to all children in the state. Based on a review of all the evidence, the applicable Alaska cases and to a lesser extent decisions from other jurisdictions regarding educational adequacy pursuant to their constitutions, the court concluded that the State’s constitutional obligation to maintain schools has four components:<sup>82</sup>

First, there must be rational educational standards that set out what it is that children should be expected to learn. These standards should meet or exceed a constitutional floor of an adequate knowledge base for children. Second, there must be an adequate method of assessing whether children are actually learning what is set out in the standards. Third, there must be adequate funding so as to accord to schools the ability to provide instruction in the standards. And fourth, where, as here, the State has delegated the responsibility to educate children to local school districts, there must be adequate accountability and oversight by the State over those school districts so as to insure that the districts are fulfilling the State’s constitutional

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<sup>80</sup> *Id.*, p. 8.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*, p. 174.

responsibility to “establish and maintain a system of public schools” as set forth in Article VII, § 1 of Alaska’s Constitution.<sup>83</sup>

The four-part Education Clause duty adopted by Judge Gleason flows logically from combining two lines of cases.<sup>84</sup> The first line makes it clear that the Education Clause gives Alaska children the right to a public education and makes the State responsible for providing this right to children; the second recognizes that the State can delegate this function, but only when the State provides precise guidance – and only if the State retains primary responsibility for constitutional compliance. In effect, when combined, this series of propositions means that, although the State may delegate its educational function to local districts, it must remain primarily responsible for maintaining an adequate school system. Collectively, these cases stand for several relevant propositions concerning the Education Clause: (1) the Clause vests the legislature with exclusive responsibility and authority over public schools in Alaska; (2) the Clause serves a dual purpose – imposing an ongoing duty on the State to establish and maintain public schools and guaranteeing all children of Alaska a right to a public education; and (3) in enacting the Clause, its drafters intended

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<sup>83</sup> *Id.*

<sup>84</sup> The superior court summarized these cases in the Legal Analysis section of its Decision and Order. [App. B, pp. 147-154] they include *Hootch v. State*, 536 P.2d 793, 799 (Alaska 1975), *Macaulay v. Hildebrand*, 491 P.2d 120 (Alaska 1971), *Breese v. Smith*, 501 P.2d 159, 167 (Alaska 1972), *Alaska State Operated School System v. Mueller*, 536 P.2d 99 (Alaska 1975), *Tunley v. Municipality of Anchorage School Dist.*, 631 P.2d 67 (Alaska 1980), *Matanuska-Susitna Borough School Dist. v. State*, 931 P.2d 391 (Alaska 1997), *Municipality of Anchorage v. Repasky*, 34 P.3d 302 (Alaska 2001), and *Kasayulie v. State*, 3AN-97-03782CI (Super. Ct. 1999).

that it would be implemented by delegating a large part of the educational function to local schools acting under supervision of an executive department of the State.<sup>85</sup>

With regard to the adequate funding component of this constitutional duty under the Education Clause, Judge Gleason reviewed all revenue sources available to the plaintiff school districts in the case. Judge Gleason recognized that the Alaska Constitution does not specify any source of funds the legislature may use to provide the system of public schools.<sup>86</sup> With regard to the sources of funding for schools, Judge Gleason concluded “[t]he State is required to insure that education is adequately funded, but in so doing it may consider all sources of funding, including private foundations, individual philanthropists, the federal government, or any number of combined sources.”<sup>87</sup>

In noting that the State depended heavily on federal money for education at the time of statehood, Judge Gleason relied on the *Molly Hootch* case for the proposition that the “framers intended that the State should continue to receive and spend federal money in providing a system of public school funding.”<sup>88</sup> After a detailed review of the testimony of experts and how the foundation formula works to fund school districts, the court rejected the plaintiffs’ contention that the achievement gap between Alaska Native students and other students is demonstrative of an underfunding of education. Judge Gleason concluded her analysis of the adequacy of the state funding system stating that “[w]hether the

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<sup>85</sup> See App. B, pp. 147-154 and cases cited above in footnote 84.

<sup>86</sup> *Id.*, pp. 179-180, ¶ 21.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*, p. 180, § 22.

Legislature chooses to adjust or replace the funding formula, or any of the components of the funding system, are all appropriate policy determinations for the Legislature to address as it may deem warranted.”<sup>89</sup> The State has made appropriate policy determinations in requiring a local contribution from boroughs like KGB. This policy determination under Article VII should not be overridden by the Anti-Dedication Clause.

**E. The State Foundation Program Distribution Formula with the Local Contribution Requirement are an Appropriate Exercise of this State’s Article VII Powers to Provide Constitutionally Adequate Funding for School Districts**

The RLC in AS 14.17.410(b) is a proper exercise of the legislature’s obligations under the Education Clause. The statute requires a minimum local revenue contribution from local communities that have been delegated the state’s taxing authority and have the tax base to support public schools.<sup>90</sup> With regard to the local contribution requirement, the legislature neither exercises its taxing authority, nor allocates an existing asset. The local contribution requirement in the school foundation program directs only that as a condition for receipt of state education funds, a local contribution be made to the borough’s own school district and approved as to the total amount by the borough assembly without any direction or dedication as to how the funds are spent, other than for education in general. The borough school board retains complete discretion and authority as to how school funds are spent once the total amount of the budget is approved and the local component of the

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<sup>89</sup> *Id.*, p. 184, ¶ 30.

<sup>90</sup> Article X, § 2, Local Government Powers. “All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.”

funds are appropriated by the borough assembly. The exercise of the State's plenary power over education to maintain a system does not conflict with the Anti-Dedication Clause.

Based on Article VII, § 1, the Alaska Supreme Court decisions addressing Article VII, and the constitutional framework adopted in the persuasive decision of Judge Gleason, the State has pervasive authority and plenary authority in establishing and maintaining a system of public schools. In establishing a public school system, the legislature exercised its power under Article VII, § 1 to consider the allocation of all available sources of revenues to provide a constitutional minimum of adequate funding for public schools required under the constitution. The State considered all sources of available revenue to design a system that provided adequate funding to meet basic need and to equalize revenues available to districts. [Exc. 059]

In keeping with the history of education in the state prior to statehood, the convention delegates expected to continue to fund schools from three sources of revenue – state, federal and local revenues. The foundation formula adopted by the State draws on all three revenue sources in allocating all the revenues available for funding education to achieve the State's goal of equalized and adequate funding. The distribution formula in the foundation program, including the local contribution requirement from cities and boroughs, is an exercise of the State's constitutional power and authority under Article VII, § 1 to establish and maintain a system of public education.

In order to insure adequate funding for local schools in boroughs and cities under the Education Clause, the legislature requires a minimum local revenue contribution from local communities that is approved by the borough assembly. The distribution formula

requiring a local contribution does not dedicate or designate how local revenues must be spent for any mandatory expenditures. Rather, the local contribution is appropriated to the school district's general fund budget. The borough school district remains under the fiscal control of the borough assembly but with the district being granted the discretion over how school district general fund revenues are spent. The Ketchikan Gateway Borough's suggestion that the State could not require a local contribution to the borough's schools would come as a surprise to the delegates to the Alaska constitutional convention.

At the time of the Alaska constitutional convention, Alaskans had little experience with local government.<sup>91</sup> The delegates to the Alaska constitutional convention considered whether to "endow education with administrative and fiscal autonomy."<sup>92</sup> The convention delegates rejected proposed amendments to grant school districts independent authority with the power to impose taxes for education. The convention delegates opted instead for not approving fiscal independence for schools and creating multiple and overlapping tax jurisdictions within an areawide unit of government.<sup>93</sup> According to Fischer's review of the convention delegates' comments and consensus on education, "the delegates generally viewed education as a borough function, they also considered it a concurrent state responsibility as set out in Article VII, of the constitution which stipulates that the state

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<sup>91</sup> Victor Fischer, *ALASKA'S CONSTITUTIONAL CONVENTION*, p. 116 (University of Alaska Press 1975).

<sup>92</sup> *Id.* at 122.

<sup>93</sup> *Id.* at 119.

must provide for a system of public education throughout the state.”<sup>94</sup> The notion that local revenues would not go to support borough schools within the constitutional framework of the State’s obligation under Article VII of the Constitution would have struck the constitutional convention delegates as an anathema.

## IX. CONCLUSION

The trial court erred in ruling that the Required Local Contribution is a “dedicated tax” under Article IX, § 7. The dedicated tax clause was intended to prohibit earmarks where the legislature exercised its taxing or appropriation power to earmark future revenue to a specific purpose. Because the RLC under AS 14.17.410(b) lacks the fundamental attributes of an earmark, it is not a “dedicated tax” under Article IX, § 7. Moreover, under *Myers v. Alaska Housing Finance Corp.*, the trial court failed to consider the competing constitutional interests in this case. As discussed above, the legislature’s obligation to adequately fund and supervise a system of public education is a constitutionally mandated function of state government under Article VII § 1. The local contribution provision of AS 14.17.410(b) is fully consistent with this core constitutional duty. CEAAC respectfully submits that any conflict between the Education Clause and the Anti-Dedication Clause must be resolved in favor of Alaska’s children and future generations.

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<sup>94</sup> *Id.* at 123.

DATED at Anchorage, Alaska this 12th day of May, 2015.

HOLLAND & KNIGHT LLP  
Attorneys for Citizens for the Educational  
Advancement of Alaska's Children

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

WILLIE & SOPHIE KASAYULIE, as Parents )  
 and Guardians of minors MARK KASAYULIE )  
 and ROBYN KASAYULIE; PAUL & MARYANN )  
 MIKE, as Parents and Guardians of minors )  
 TRAVIS MIKE, CALVIN MIKE, and LEEANDY )  
 MIKE, ARTHUR & RUTH HECKMAN, as Parents )  
 and Guardians of minors ARTHUR HECKMAN, )  
 JR., LLOYD HECKMAN, CANDACE HECKMAN, and )  
 SUZANNE HECKMAN; BERING STRAIT SCHOOL )  
 DISTRICT; IDITAROD AREA SCHOOL DISTRICT; )  
 KASHUNAMIUT SCHOOL DISTRICT; LOWER )  
 KUSKOKWIM SCHOOL DISTRICT; LOWER YUKON )  
 SCHOOL DISTRICT; YUPIIT SCHOOL DISTRICT; )  
 and THE CITIZENS FOR THE EDUCATIONAL )  
 ADVANCEMENT OF ALASKA'S CHILDREN, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 STATE OF ALASKA, )  
 )  
 Defendant. )

FILED  
 in the Office of  
 Superior Court  
 Judge John Neese

SEP 1 1999

State of Alaska  
 Third Judicial District  
 at Anchorage

CASE NO. 3AN-97-3782 CIV

ORDER GRANTING PLAINTIFFS'  
MOTIONS FOR PARTIAL SUMMARY JUDGMENT  
ON FACILITIES FUNDING

Introduction

Kasayulie et al instituted this civil action against the State of Alaska to obtain a judgment declaring that the method of funding capital projects for education is void under the Alaska Constitution, it violates Title VI of the Civil Rights Act of 1964 and it is a breach of the State's trust obligations.

The motions addressed in this order are plaintiffs' Motion for Partial Summary Judgment on Facilities Funding; defendant's Motion for Partial Summary Judgment as to Plaintiffs' First Cause

of Action (Education Clause); and defendant's Cross Motion for Partial Summary Judgment as to Plaintiffs' Second Cause of Action (Equal Protection) and Third Cause of Action (Title VI).

The court holds that none of the motions filed contain genuine issues of material fact. For the reasons set forth below, plaintiffs' Motions for Partial Summary Judgment on Facilities Funding is GRANTED. Defendant's Motion for Partial Summary Judgment as to Plaintiffs' First Cause of Action (Education Clause) is DENIED. Defendant's Cross Motion for Partial Summary Judgment as to Plaintiffs' Second Cause of Action (Equal Protection) and Third Cause of Action (Title VI) is DENIED.

#### Background

The state has developed a system for funding school capital construction and major maintenance. The two statutory systems in place are the capital improvement program ("CIP") and the debt and bond reimbursement system.

CIP involves the submission of a grant application to the state. All applications are ranked by the Department of Education, and funding is to be granted in order of priority. CIP receives its money by legislative appropriations, but it has never been funded.

The debt and bond reimbursement mechanism provides that 70% of each bond issued will be reimbursed by the state. The remainder is paid for locally. This program is only available to municipalities or boroughs. Because rural educational attendance areas ("REAA") are unincorporated, REAAs can not participate. In

addition, a number of rural municipal school districts do not have sufficient property values to participate in the bond reimbursement program.

A few other funding mechanisms exist. From time to time the legislature appropriates additional school maintenance funding, but it is usually directed to urban areas. Cigarette sales tax money also goes towards funding schools, but only to municipality or borough districts.

Because of the funding system, rural schools are not getting the money they need to maintain their schools. Deficiencies include roofs falling in, no drinkable water, sewage backing up, and enrollment up to 187% of capacity. Some rural schools have been at the top of the priority list for a number of years, yet have received no funding.

### Discussion

#### I. Standard of Review.

The proponent of a motion for summary judgment has the burden of establishing the absence of genuine issues of material fact and its right to judgment as a matter of law. Dansereau v. Ulmer, 903 P.2d 555, 570 (Alaska 1995) (citing Bauman v. State, Div. of Family and Youth Services, 768 P.2d 1097, 1099 (Alaska 1989)). The party opposing a motion for summary judgment need not establish that it will prevail at trial but merely that there exists a genuine issue of fact to be litigated. Alaska Rent-a-Car, Inc. v. Ford Motor Co., 526 P.2d 1136 (Alaska 1974). All inferences of fact from proffered proofs must be drawn in favor of the nonmoving party.

Maddox v. River & Sea Marine, Inc., 925 P.2d 1033, 1035 (Alaska 1996).

II. The State has violated the Education Clause.

Plaintiff Kasayulie has moved for summary judgment arguing that the Education Clause requires the state to provide adequate educational facilities. The plaintiffs further contend that the State is violating that duty by utilizing a funding scheme that does not adequately maintain schools in rural areas.

The state opposes arguing the Education Clause does not require it to provide buildings for schools. The clause only requires that the state establish and maintain a school system, which it has done. The State also argues that the legislature's discretion to appropriate funds prevents the court from instructing the legislature how to spend its money.

The Education Clause states:

The legislature shall by general law establish and maintain a system of public schools open to all children of the state.

AK. Const. art. VII sec. I (1998).

The court has the power to interpret Alaska Constitutional mandates, including those placed on the legislature. Malone v. Meekins, 650 P.2d 351,356 Alaska (1982).

A. The Education Clause requires the State to provide and maintain school facilities.

The Education Clause places an affirmative duty on the state to provide public education. Facilities funding is an integral part of education and as such is inseparable from the State's obligation to establish and maintain a public education system.

The State of Alaska itself has recognized the importance of adequate school facilities. The Department of Education standards state that "The school plant, consisting of site, buildings, equipment, and services, is an important factor in the functioning of the educational program. The school plant serves as a vehicle in the implementation of the school mission."

Comparing the Education Clause in the Alaska Constitution with those in other states is instructive. Hootch v. AK State-Operated School System, 536 P.2d 793, 801 (Alaska 1975). The state of New York's Education Clause is similar to Alaska's.

The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.  
N.Y. Const. art. XI, sec. 1. (1987).

The New York Court of Appeals interpreted its Education Clause to require the state to provide, at a minimum, "adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn." Campaign for Fiscal Equity, Inc. v. State, 655 N.E.2d 661, 666 (N.Y. Ct.App. 1995). Alaska, like New York, must provide adequate educational facilities.

B. The State must use a funding scheme that adequately maintains rural schools.

Hand in hand with the duty to provide educational facilities, is the duty to fund the facilities. All schools must have substantially equal access to capital funds. The state does not provide the rural schools with assurance of adequate facilities funding.

The state system for facilities funding provides adequate

opportunities for urban school districts, but not for rural schools. The CIP grant system has never been funded. As result, priority ranked schools, which are mostly rural, are not funded. The bond reimbursement program is available only for boroughs and municipalities. REAAs have no access to those funds. Even if a rural area is incorporated, its property values are often too low to support bonding. A portion of the cigarette tax goes towards funding education, but only for borough and municipality schools. Furthermore, sporadic legislative appropriations for facilities are usually directed towards urban schools.

The rural areas do not have substantially equal access to facilities funding. As a result, many rural schools are continuously denied facility funding. A large number of these schools need replacement or total renovation. Failing to provide adequate funding for facilities in rural areas violates the Education Clause.

Therefore, plaintiff Kasayulie's Motion for Partial Summary Judgment on the First Cause of Action (Education Clause) is GRANTED, and defendant State's Motion for Partial Summary Judgment as to the same is DENIED.

III. The State has violated the Equal Protection Clause.

Kasayulie argues that the inequality of funding for educational facilities deprives the school districts of their right to equal protection. The state opposes arguing it is reasonable for the legislature to provide the bond reimbursement program only to municipalities and boroughs because it creates an incentive for

REAAAs to incorporate. Furthermore, the legislature does not have to solve all the problems at once, it can solve them one at a time.

Treating one group of similarly situated people different from another is unconstitutional under the Equal Protection Clause. The level of scrutiny applied to an equal protection analysis depends on the individual interest asserted. Laborers Local No. 942 v. Lampkin, 956 P.2d 422, 430 (Alaska 1998). The interest stated is the most important factor in determining the level of review. The more important the interest, the higher the scrutiny. Alaska Pacific Assur. Co. v. Brown, 687 P.2d 264, 269 (Alaska 1984).

A. Education is a fundamental right.

The interest asserted by Kasayulie is the right to a public school system open to all children of the state. Kasayulie states that the right to education is a fundamental right because it is expressly stated in the Alaska Constitution. The state opposes by arguing that Kasayulie has no historic or legal basis supporting its contention.

Alaska values education. The Alaska Constitution guarantees all children of Alaska a right to a public education. AK Const. article VII, sec. 1 ("the legislature shall by general law establish and maintain a system of public schools open to all children of the State..."); Breese v. Smith, 501 P.2d 159, 167 (Alaska 1972). Hundreds of millions of dollars are spent every year on education, standards are set and each child is required to attend school. Chief Justice Warren articulated the importance of education in Brown v. Board of Education.

...education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education demonstrates our recognition of the importance of education to our democratic society... It is the very foundation of good citizenship... it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.  
347 U.S. 483, 493 (1954).

To determine if the right to an education is a fundamental right the court must look to the Constitution. The federal Constitution does not explicitly or implicitly provide for a right to education. As a result, the United States Supreme Court held that education is not a fundamental right under the federal equal protection analysis.

The key to discovering whether education is "fundamental" is... whether there is a right to education explicitly or implicitly guaranteed by the Constitution.

San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 33 (1973).

Unlike the United States Constitution, the right to education is expressly stated in the Alaska Constitution. The Education Clause guarantees all children a right to public education. Breese v. Smith, 501 P.2d 159, 167 (Alaska 1972). Because the interest is expressly provided for in the Constitution, it is a fundamental right under the equal protection analysis.

B. The State does not have a compelling reason for the inequality of funding.

Because the right to education is a fundamental right, the state must have a compelling reason for the inequality of facility funding.

...the state must establish its interference with that right is forced by some compelling state interest and its interference is the least onerous means of accomplishing that objective.

Campbell County School District v. Wyoming, 907 P.2d 1238, 1666-67 (Wyoming 1995).

The state says the facilities funding system is in furtherance of its duty to establish and maintain a public school system. The compelling reason for the means chosen is to provide an incentive for REAAs to incorporate and to encourage maximum local participation and responsibility.

The State has cited no compelling reason for infringing on the fundamental right to an education. Encouraging a REAA to incorporate is not a compelling reason for denying schools the right to school buildings. The same can be said for the State's plan to encourage local participation. It is unlikely that a compelling reason exists for the arbitrary manner in which the State distributes facilities funding. Furthermore, there are less restrictive means available to achieve incorporation of unorganized areas of the state.

Another argument from the State is that the legislature is not funding rural schools because it is solving one problem at a time. After the state deals with funding for urban areas, it will begin addressing rural funding issues. There is absolutely no evidence for this proposition.

The State also tries to argue that it is granting the urban schools a benefit. In doing so it is not denying the rural schools a benefit by granting it to another. This argument fails. Education is not a benefit, it is a constitutional right.

Therefore, Kasayulie's Motion for Partial Summary Judgment as to the Second Cause of Action (Equal Protection) is GRANTED, and defendant State's Cross Motion for Partial Summary Judgment as to the same is DENIED.

IV. The State has violated Title VI.

Kasayulie argues that the funding system violates Title VI implementing regulations as it has a disparate impact on racial minority school children. The State opposes, arguing the Alaska Natives are affected by their residence, not their race.

Title VI prohibits discrimination because of race or national origin in federally funded programs. 42 U.S.C. section 2000d et seq. The State must comply with Title VI as Alaska receives money for education from the federal government. Title VI implementing regulations state that recipients of federal funding may not:

utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

34 C.F.R. Sec. 100.3(b)(2)

A New York appellate court stated:

A validly stated cause of action under the Title VI regulations thus has two components: "whether a challenged practice has a sufficiently adverse racial impact--in other words, whether it falls significantly more harshly on a minority racial group than on the majority--and, if so, whether the practice is nevertheless adequately justified." [citations omitted] Statistics comparing benefit distribution or access patterns among members of the protected class and the over-all population play a key role in demonstrating an adverse racial impact. [citations omitted]

Campaign for Fiscal Equity, Inc. v. State, 655 N.E.2d 661, 670 (N.Y. Ct. App. 1995).

Kasayulie need not prove discriminatory intent, but only that the funding scheme has the effect of discrimination. Guardians Assn. v. Civil Serv. Comm., 463 U.S. 582 (1983). The State must then show that such actions are justified.

The facilities funding scheme has a disparate impact on racial minorities. Alaska Natives make up the vast majority of rural school enrollment, up to 99% in some REAAs. At the same time schools receiving the most funding, Anchorage and Fairbanks, have only a 10% Alaska Native population. All total, Native enrollment is 15.4% and 37.3% in organized boroughs and city school districts respectively. REAAs' populations are 82% Native. The State's denial of funding to the rural schools has a racially discriminatory effect, as those are the same schools that enroll an overwhelming majority of Native students.

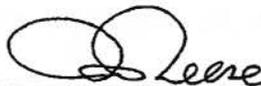
The State's actions are not adequately justified. The State argues that the Title VI claim is about residence, not race. That is incorrect. Title VI is about the different treatment afforded certain populations of people in Alaska. It is about the fact that school districts with predominantly Native enrollment receive lower funding than others. The State has shown no substantial legitimate justification for such disparate treatment.

Therefore, Kasayulie's Motion for Partial Summary Judgment as to the Third Cause of Action (Title VI) is GRANTED, and State's Cross Motion for Partial Summary Judgment as to the same is DENIED.

Conclusion

For the aforementioned reasons, IT IS HEREBY ORDERED that plaintiff Kasayulie's Motion for Partial Summary Judgment on Facilities Funding is GRANTED. Defendant's Motion for Partial Summary Judgment as to Plaintiffs' First Cause of Action (Education Clause) is DENIED. Defendant's Cross Motion for Partial Summary Judgment as to Plaintiffs' Second Cause of Action (Equal Protection) and Third Cause of Action (Title VI) is DENIED.

DATED this 1<sup>st</sup> day of September, 1999 at Anchorage, Alaska.



\_\_\_\_\_  
John Reese,  
Superior Court Judge

I certify that on: 9-1-99  
a copy of the above was mailed/delivered  
to each of the following at their addresses  
of record: D. Hickey  
H. Trickey  
Secretary/Deputy Clerk *MS*

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

KRISTINE MOORE and GREGORY MOORE, for themselves and as the parents or guardians of their minor children, JASON EASTHAM, SHANNON MOORE and MALLORY MOORE; MIKE WILLIAMS and MAGGIE WILLIAMS, for themselves and as the parents of their minor daughter, CHRISTINE WILLIAMS; MELVIN OTTON and ROSEMARY OTTON, for themselves and on behalf of their minor children, HELENA OTTON, FREDERICK OTTON and BENJAMIN OTTON; WAYNE MORGAN and MARTHA MORGAN, for themselves and as parents of their minor children, WAYNE MORGAN II, PATRICK MORGAN, RILEY MORGAN, and SKYE MORGAN; JERRY S. DIXON, on behalf of himself and as the father of KIPP DIXON and PYPER DIXON, minors; the YUPIIT SCHOOL DISTRICT; the BERING STRAIT SCHOOL DISTRICT; the KUSPUK SCHOOL DISTRICT; NEA-ALASKA, INC.; and CITIZENS FOR THE EDUCATIONAL ADVANCEMENT OF ALASKA'S CHILDREN, INC.,  
  
Plaintiffs,  
  
vs.  
  
STATE OF ALASKA,  
  
Defendant.

Case No. 3AN-04-9756 Civil

DECISION AND ORDER

The Education Clause of Alaska's Constitution provides that "the legislature shall by general law establish and maintain a system of public schools open to all children of the state." Article VII, § 1, Alaska Constitution. In this litigation, the Plaintiffs' primary assertion is that the State has violated this constitutional provision. [Second Amended Complaint (SAC) filed December 6, 2004, at 2] The Plaintiffs acknowledge that the State has adopted "constitutionally sound course requirements, instructional standards, and testing criteria." [id. at 2] But the Plaintiffs allege that the State has violated the Education Clause by failing "consistently and repeatedly to adequately fund" this constitutionally mandated education. [id.]

In addition, the Plaintiffs assert that their rights to substantive due process as set forth in Article I, Section 7 of the Alaska Constitution have been violated by the State with respect to the State's education funding and testing requirements. But the Plaintiffs in this case do not allege, unlike many school funding lawsuits in other states, that their rights to equal protection have been violated. That is, the Plaintiffs are not alleging that the State is treating one group of school children within the state differently from other children in violation of the State's constitutional guarantee to equal protection.

### ***Procedural History of the Case***

This action began on August 9, 2004, when the Plaintiffs filed their complaint against the State of Alaska. The Plaintiffs consist of the parents of several Alaskan school children, three rural school districts within the state (Bering Strait,

Kuspuk and Yupit), and two educational advocacy organizations, NEA-Alaska, Inc. and Citizens for the Educational Advancement of Alaska's Children.

***The Plaintiffs' Complaint***

The Plaintiffs' Second Amended Complaint (SAC) is a 54-page document that sets out their perspective on the status of education in Alaska. There, the Plaintiffs acknowledge that the State of Alaska's Department of Education and Early Development (EED) has developed detailed educational content and performance standards for Alaska's school children. Those standards, in the Plaintiffs' view, "if followed, [would] provide each child with a constitutionally adequate education." [SAC at 7]

But the Plaintiffs allege that "[t]hrough the state has spent many years defining educational adequacy, identifying the necessary components of educational adequacy, and developing objective criteria for measuring educational adequacy, it has failed to fund the very educational adequacy so defined, identified and measured. It has failed to maintain a system of education and to keep a system open to all, all in violation of Article VII, Section 1, of the Alaska Constitution." [id. at 50]

With respect to their substantive due process claim, the Plaintiffs assert that the State has funded "education so inadequately" and has "additionally been arbitrary, capricious, and discriminatory by funding education without knowing the cost of an adequate education statewide or locally" so as to constitute a deprivation to the Plaintiffs of their right to substantive due process. [id. at 51]

The relief that the Plaintiffs seek in their Second Amended Complaint can be summarized as follows:

- (1) a judicial declaration that the current funding amount and system does not provide the children of Alaska with a constitutionally adequate education under the Education Clause and/or the Due Process Clause;
- (2) a judicial declaration that specifically defines what constitutes a constitutionally adequate education;
- (3) a judicial declaration that finds that the educational content and performance standards developed by the Department of Education and Early Development meet the standards necessary for a constitutionally adequate education, "recognizing that in the future that content may change;"
- (4) a judicial declaration that the current standards and areas tested by the State, including the graduation exams for reading, writing, and mathematics and all benchmark exams, adequately test students on "their acquired knowledge of the constitutionally provided adequate education;"
- (5) an order requiring that the State determine the cost of providing for a constitutionally adequate education as set forth in paragraphs (1) through (4) above; and
- (6) after the cost of providing a constitutionally adequate education is determined, that the Court order that the State fund the education of Alaska's children accordingly.

[Id. at 52-54]

The State filed an answer to the Plaintiffs' complaint in which it denied the Plaintiffs' substantive allegations.

#### ***Pre-trial motions***

In December 2004, the State filed a Motion to Dismiss Education Clause Claims. The motion sought summary dismissal of the Plaintiffs' claim that the State had violated the Education Clause because, in the State's view, the

consideration by a court of "issues related to the quality of education in Alaska is a nonjusticiable political question" and these issues are never "proper issues for the courts." [Motion at 2] Instead, in the State's view, "the legislature is solely responsible for determining the proper quality of education in the state." [Id. at 9] The Plaintiffs, in opposing the State's motion, asserted that the Education Clause accords to Alaska's school children a constitutionally protected right to an education. They sought judicial enforcement of that constitutional right from the court, "because in Alaska, constitutional rights are the province of the judiciary." [Plaintiffs' Opp. at 66]

In an order dated August 18, 2005, this Court denied the State's motion. This Court noted that both parties agreed that the Alaska Supreme Court's decision in Hootch v. Alaska State-Operated School System, 536 P.2d 793 (1975) (Molly Hootch) was central to the determination of the issue. The Order interpreted the Molly Hootch decision "as recognizing a constitutional right to assert to a court that the State has failed to establish and maintain a public school system." [Order re First Motion to Dismiss at 10] But, relying on Molly Hootch, this Court found that "the Education Clause does not permit or envision extensive judicial oversight into the specific educational options to be accorded to each child in the state." [Id. at 11]

In September 2005, pursuant to the parties' stipulation, this Court bifurcated the trial. As a result, the first trial would only address the Plaintiffs' claims for declaratory relief. Only if this Court concluded that Plaintiffs had established a constitutional violation would there then be a second trial on the appropriate

remedy. Thus, the trial that was held before this Court in October 2006 focused solely on whether the State had violated either the Education Clause or Due Process Clause of the Alaska Constitution, and did not directly address what remedy would be appropriate in the event such a violation was established.

The State filed a Second Motion to Dismiss in 2005. In this motion, the State raised three assertions: (1) that the Court lacked jurisdiction over the State of Alaska as a named defendant because of sovereign immunity; (2) that the Plaintiffs had failed to name as defendants the Regional Education Attendance Areas (REAs), municipal school districts, and municipalities, all of whom the State asserted are necessary defendants in this action; and (3) if this case is not dismissed under either of the first two bases, then several of the Plaintiffs should be dismissed for lack of standing. [Mot. at 1]

In an order dated November 30, 2005, this Court denied the State's Second Motion to Dismiss in all respects except as to its assertion that the school districts lacked standing to assert a due process claim against the State.

With respect to the sovereign immunity defense, this Court held, "[w]hile damage recovery against the State for alleged constitutional violations is restricted, declaratory relief is not." [Order re Second Motion to Dismiss at 3]

As to the second issue, the State had asserted that because the Legislature had delegated comprehensive local control of schools to the REAs, municipal school districts, and the municipalities from which they originate, education is not only the State's responsibility but also the responsibility of its school districts. The State argued that the school districts and boroughs were indispensable

parties because their rights to local control would be impaired if the Plaintiffs are successful in this litigation. [Order at 4] In their opposition, the Plaintiffs asserted that their case is about lack of funding, and that "funding, the gravamen of this lawsuit, comes from the state." [Id.] They cited to the Alaska Supreme Court's decision in Macauley v. Hildebrand, 491 P.2d 120 (Alaska 1971), which held that even though the Legislature has seen fit to delegate certain education functions to local school boards, that in no way diminishes the "constitutionally mandated state control over education." Id. at 122. Upon review, this Court denied the State's motion to require the Plaintiffs to add all school districts and municipalities as indispensable defendants.

On the third issue presented in the State's Second Motion to Dismiss, this Court held that the school district Plaintiffs lacked standing with respect to the due process claim based on established Alaska Supreme Court precedent. With respect to the remaining Plaintiffs and all other claims, this Court found that the Plaintiffs had the requisite standing to maintain this action.

In January 2006, the State filed a Motion to Establish Standard of Review seeking a delineation prior to the trial as to the applicable legal standard that the Court would be applying with respect to the Education Clause. The State sought an "extremely deferential"<sup>1</sup> standard of review. The Plaintiffs, however, sought to have this Court find that education is a fundamental right such that if the Plaintiffs were able to show that children are not being provided with the opportunity for a constitutionally adequate education, the State would have to prove a compelling

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<sup>1</sup> State's Motion to Establish Standard of Review at 13.  
Moore, et al. v. State of Alaska, 3AN-04-9756 C1  
*Decision and Order*  
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reason why it is excused from doing so or the Plaintiffs would be entitled to a remedy.

By order dated June 11, 2006, this Court declined to adopt either party's analysis, finding each construct inapplicable to the Plaintiffs' claim that the government was not providing a constitutionally guaranteed education, as opposed to a claim that the government was taking away a constitutionally guaranteed right. Instead, this Court held "it is the court's responsibility to determine a constitutional floor with respect to educational adequacy and to determine if that constitutional floor is currently being met." [Order at 4 (citation omitted)] Thus, "the focus at trial with respect to this claim should be on defining the constitutional right to an education under Alaska's Constitution and determining whether the schools that have been established and maintained fulfill that constitutional right." [Order at 5-6]

Against this procedural backdrop, the trial with respect to the Plaintiffs' request for declaratory relief as to the alleged constitutional violations began as scheduled on October 2, 2006.

The trial was conducted before the Court sitting without a jury over the course of 21 days. During that time, this Court heard testimony from 28 witnesses. In addition, over 800 exhibits were admitted at trial, and the deposition testimony and exhibits of an additional 23 witnesses were filed.

On December 1, 2006, each party submitted proposed Findings of Fact and Conclusions of Law. The Plaintiffs' proposed findings totaled 140 pages; the State's totaled 148 pages. The parties also submitted a transcript of the trial

proceedings which totaled nearly 4,000 pages. Closing arguments were heard on December 19, 2006.

As the case proceeded, the issue before the Court expanded to encompass not only the adequacy of the State's funding of education, but also the adequacy of the State's oversight of education in the local school districts to which it had delegated authority. See, e.g., Plaintiff's Proposed Findings at 125 ¶ 375. See Civil Rule 15(b).

Having considered all of the evidence presented, together with the arguments and proposed Findings of Fact and Conclusions of Law submitted by counsel, this Court now enters the following:

### **FINDINGS OF FACT**

#### ***I. Alaska's Educational System***

##### ***A. An overview***

1. There are approximately 130,000 children who attend public school in Alaska. [Ex. 108 at 3] The students attend school in approximately 500 different schools. Public education in Alaska is currently delivered by 53 school districts and by the state boarding school at Mt. Edgecumbe, which is treated as a separate district. [Id.] Overall, the number of students in Alaska has remained stable for the past several years, although some districts have had increased enrollment and others have had decreased numbers of students. [Tr. 2467]

2. In FY 2005, the total revenue per student in Alaska, including state, local and federal funds, was \$10,578. However, there is considerable variation

among districts. The revenue per student in the three Plaintiff school districts for that fiscal year was \$21,265 for Bering Strait, \$21,758 for Kuspuk and \$22,578 for Yupiit. Revenue per student that year was \$8,708 for Anchorage and \$9,769 for Fairbanks. None of these amounts includes capital expenditures, pupil transportation, food service, community schools or certain grants. [Exs. 2321, 2022]

3. Districts other than Mt. Edgecumbe consist of three main types. Each of the 16 organized boroughs is a school district. AS 14.12.010. The 18 home rule and first-class cities located in the unorganized borough are also school districts. AS 14.12.010(1); AS 29.35.260(b). The remaining 19 school districts are Rural Education Attendance Areas (REAs) in the unorganized borough. AS 14.08.021.

4. The five largest school districts in the state – Anchorage, Mat-Su, Fairbanks, Kenai and Juneau – educate more than 70% of the school children in Alaska. Over one-third of Alaska's school children attend the Anchorage School District. [Ex. 2364] Twenty-eight school districts – more than half of all the districts – educate less than five percent of Alaska's school children. [Ex. 2364]

5. At statehood in 1959, some rural schools were operated by the Bureau of Indian Affairs (BIA) for Alaska Natives. Even after statehood, the BIA continued to operate many elementary schools and regional boarding schools in rural Alaska. [Tr. 3583-88] Rural schools that were not under BIA control were under state control for the first 27 years after statehood. That system was known as the State-Operated School System. Beginning in 1976, local rural school

districts began operating as Rural Education Attendance Areas (REAs). However, some rural schools remained under BIA control until 1985. [Tr. 3583-89, 1516-17] Thus, at the time of trial, no REAA has had more than 30 years of experience with local control over education. Some REAs, like the Yupiit School District, had about 21 years of experience at the time of this trial.

6. At the time of statehood, the State did not pay for kindergarten. The State did not start providing funding for kindergarten until 1966. [Ex. 3 at 405]

7. The Alaska Constitution accords to the Legislature the responsibility to "establish and maintain" the schools in Alaska. AK. Const. Art. VII, § 1. In response to this constitutional directive, the Alaska Legislature has "established in this state a system of public schools to be administered and maintained as provided in this title." AS 14.03.010. Children "of school age" -- generally children between the ages of 5 and 19 -- are "entitled to attend public school." AS 14.03.070, .080. School attendance is compulsory for "every child between seven and 16 years of age." <sup>2</sup> AS 14.30.010. The Legislature has also established a minimum number of days that schools must be in session each year. AS 14.03.030. And the Legislature has created a system for the certification of teachers and school administrators. AS 14.20.010 et seq.<sup>3</sup>

<sup>2</sup> See AS 14.30.010 (stating that children who are temporarily ill or injured, have been excused by action of the school board, have completed 12<sup>th</sup> grade, or have a physical or mental condition that would make attendance impractical are excused from requirement to attend).

<sup>3</sup> Plaintiffs' proposed findings cite to "numerous other instances where the Legislature has exercised its plenary power": the requirement that Alaska history must be taught, that bilingual-bicultural education be provided, that "educational services" for gifted children be established, etc. [Plaintiffs' Proposed Findings at 11, fn. 49]

8. The Legislature has also established the State Board of Education & Early Development, which sets education policy for the State. The Commissioner of the Department of Education & Early Development is appointed by the State Board with the governor's approval. The Commissioner heads the State Department of Education & Early Development (EED), which exercises general supervision of the public schools in Alaska, provides research and consultative services to school districts, establishes standards and assessments, administers grants and endowments, and provides educational opportunities for students in special situations. AS 14.07.010 - .020; AS 14.07.145. Roger Sampson has been the Commissioner at EED throughout the course of these proceedings.

9. Subject to these overriding provisions of state law, the Legislature has ~~delegated to locally elected school boards the responsibility to operate~~ public schools. See, e.g., AS 14.08.021 (legislative delegation to REAAs). School boards in Regional Education Attendance Areas (REAAs) have the authority to determine their own fiscal procedures; appoint, compensate and otherwise control all school employees; adopt regulations governing organizations, policies and procedures for the operation of the schools; and employ a chief school administrator. AS 14.08.101. State law also specifies certain duties for the local school board, including the obligation to provide an educational program for each school-age child who is enrolled in or is a resident of the district, and to develop a philosophy of education, principles and goals for its schools. AS 14.08.111.

**B. The State's Content and Performance Standards**

10. The adoption and refinement of educational standards has been a major reform movement for over 15 years involving many educators and other citizens throughout Alaska. [Tr. 3607-15] The development of Alaska's standards coincided with a broader national movement towards standards that began in approximately 1990. [Darling-Hammond Perp. Depo. at 43-44]

11. The State has adopted two types of standards: content standards and performance standards. Content standards are described as "broad statements of what students should know and be able to do as a result of their public school experience." [Ex. 219 at 9] Alaska has content standards in twelve subject areas: English/language arts, mathematics, science, geography, government and citizenship, history, skills for a healthy life, arts, world languages, technology, employability, and library/information literacy. [Ex. 219 at 11-36]

12. Commissioner Sampson has described the standards as "a map, if you will, as to what it was we wanted our schools and our teachers to move our kids towards." [Tr. 2349]

13. Performance standards (also termed "grade level expectations") are "statements that define what all students should know and be able to do at the end of a given grade level." [Ex. 219 at 41] The State has adopted performance standards for grades 3 through 10 in reading, writing and math, and for grades 3 through 11 in science. [Id.; Tr. 2352-53, 2834-36]

14. The Department of Education and Early Development (EED) has engaged in several rounds of standards-setting, which has been an intensive

process involving large groups of Alaskans, including educators and diverse members of the public from across the state. [Tr. 3607-13] The end result of the most recent iterations of this process is set out in the Alaska Standards booklet (revised March 2006). [Exs. 219, 2157]

15. Witnesses at trial who were asked to comment on Alaska's standards all indicated their general approval of them, although there was disagreement as to whether mastery or proficiency or exposure should be the goal with respect to some of the content areas.<sup>4</sup> For example, one of the Plaintiffs' experts, Dr. Darling-Hammond, testified that Alaska's standards are "very similar to the standards in a number of other states" and are "very much a reasonable set of appropriate standards that reflect the kinds of expectations that we have for citizens and workers and those going on to college today." [Darling-Hammond Perp. Depo. at 46]

16. Educational standards can help to bring focus to the content of what should be taught throughout the state, and the State is to be highly commended for the development of these standards.

17. However, under the Department's regulations, "[t]he content standards are not graduation requirements or components of a curriculum." 4 AAC 04.010. State law does not require school districts to adopt the State standards or to align their curriculum with the standards.

18. Instead, under existing Alaska law, each of Alaska's 53 school districts has been delegated the authority to determine what students in that

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<sup>4</sup> There was also some discussion as to whether exposure to world languages would be an important element of an education to a student who was already bilingual. See, e.g., testimony of John Davis, Ph.D. [Tr. 194] Moore, et al. v. State of Alaska, 3AN-04-9756 CI Decision and Order  
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district should be taught. State regulations provide that each school board must adopt a curriculum that "describes what will be taught students in grades kindergarten through 12." 4 AAC 05.080(d). By State regulation, that curriculum:

- (1) must contain a statement that the document is to be used as a guide for planning instructional strategies;
- (2) must contain a statement of goals that the curriculum is designed to accomplish;
- (3) must set out content that can reasonably be expected to accomplish the goals;
- (4) must contain a description of a means of evaluating the effectiveness of the curriculum; and
- (5) may contain a description of the extent to which the local goals accomplish the state goals set out in 4 AAC 04.

4 AAC 05.080(d) (emphasis added).

19. Each school district is required to undertake a "systematic evaluation of its curriculum on an ongoing basis with each content area undergoing review at least once every six years." 4 AAC 05.080(e). Kodiak Superintendent Betty Walters testified that EED requires the district's curriculum be submitted to EED, and indicated that EED has been quite helpful to that district in providing the district with assistance in its curriculum development whenever requested. [Tr. 3095]

20. EED is required to report to the Legislature each year as to "each school district's and each school's progress in aligning curriculum with state education performance standards." AS 14.03.078(5). Although it appears that most districts have indicated that their curriculum is aligned with the State standards, it is unclear the extent to which EED has actually reviewed the curriculum of each district and school to determine the extent of such alignment.

Of perhaps far greater significance, it is unclear whether EED has determined whether such curriculum is actually being taught in the classroom.<sup>5</sup>

21. The State may become more involved with a school district's curriculum in one circumstance. If a district receives Title 1 federal funding and is designated as Level 4 under the No Child Left Behind standards, EED is required to implement one or more corrective actions. 4 AAC 06.840.<sup>6</sup> One corrective action that EED may take is the implementation within the district of "a new curriculum based on state content ... and performance standards ... including the provision, for all relevant staff, of appropriate professional development that (A) is grounded in scientifically-based research; and (B) offers substantial promise of improving educational achievement for low-achieving students." 4 AAC 06.840(k)(2). There was no evidence presented at trial that indicated the State has undertaken such action in any school district. \_\_\_\_\_

22. The State has made model instructional units available to districts that are fully aligned with the State standards. As explained by Commissioner Sampson, "We did this almost four years ago. We have available to districts that choose to use them now 180 days' worth of lessons in reading, writing, and mathematics that are aligned to our standards and grade-level expectations." [Tr. 2404-5]

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<sup>5</sup> See Ex. 88, Response to AS 14.03.078(5), in which it appears that the Department has asked each district to respond as to whether that district's curriculum is aligned with the standards. The "survey results" there indicated that all but 2 districts (Chatham and Annette Island) have a curriculum that is fully aligned with the state standards – a finding that is inconsistent with the testimony and other evidence at trial presented with respect to both Kuspuk and Yupiit.

<sup>6</sup> See Finding of Fact #100 for an explanation of NCLB's levels.

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23. Kodiak Superintendent Betty Walters testified how the State has assisted the Kodiak School District with its curriculum: "from the department, we have all the technical assistance, as well as the guidance [ ] for programs that we choose to buy into." [Tr. 3093] Specifically, the superintendent testified about the State's assistance to that district when that district decided to institute a new reading program for primary students. The State's assistance included providing all the staff development training as well as the initial materials at the State's expense. [Tr. 3094-95]

24. Thus, although the State has developed comprehensive content and performance standards, there is neither a statewide curriculum in Alaska, nor any requirement in state law that school districts must have a curriculum aligned with the performance and content standards that the State has developed.<sup>7</sup> But for ~~districts that seek the State's assistance, considerable resources and assistance~~ in curriculum development are available.

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<sup>7</sup> Unlike some other state constitutions, "the Constitution of Alaska does not require uniformity in the school system." Molly Hootch v. Alaska State Operated School System, 536 P.2d 793, 803 (Alaska 1975). California, for example, adopted "Statewide academically rigorous content standards" in Cal. Code § 60605 (2007). That statute states that the State Board of Education must adopt statewide academically rigorous content standards in core curriculum areas. Id. Additionally, the board must "review the existing curriculum frameworks for conformity with the new standards and shall modify the curriculum frameworks where appropriate to bring them into alignment with the standards." Id. Similarly, Arizona requires the state board of education to "prescribe a minimum course of study ... and incorporat[e] the academic standards adopted by the state board of education, to be taught in the common schools." Ariz. Rev. Stat. Ann. § 15-701(A)(1) (2006). Additionally, the governing board of a school district must establish a curriculum which includes those academic standards. Id. at (B)(1).

### ***C. Funding of Public Education in Alaska***

#### ***The State Funding Formula***

25. The State provides foundation funding to each of the school districts for children age five to twenty to attend public schools.<sup>8</sup> AS 14.03.080. Under the current formula, the Legislature has established a base student allocation, which is essentially the amount of funding per student that serves as the building block for the allocation of state educational funding to the various schools districts. AS 14.17.470. The legislative formula also includes a geographic cost differential between districts and an adjustment based on the size of the schools within a district. AS 14.17.450, .460. There is an additional 20% flat-rate adjustment for special education as well as additional funding for each student who receives intensive services. AS 14.17.420.

~~26. The current funding formula was adopted in 1998. When the formula changed at that time, some districts became entitled to more money and some districts would receive less than they had received under the prior formula. But the State phased-in the implementation of the new formula over time as to most of the districts whose funding was reduced. [Tr. 2077-79]~~

27. The school size adjustment factors and district cost factors in the current formula were derived from a 1997-98 study entitled "Alaska School Operating Cost Study," undertaken by the McDowell Group, an economic

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<sup>8</sup> Under an early-entry statute, children under five may attend kindergarten if they are prepared to enter into first grade the next year. AS 14.03.080. At one time, many districts used the early-entry provision to obtain funding for four-year olds and established a two-year kindergarten program. [Tr. 2571-72] In 2003, the legislature clarified that the early-entry provision was only for four-year-olds ready to begin public school, and the additional funding was eliminated. [Tr. 2548]

consulting firm in Juneau. The McDowell Group derived the factors from actual cost data. [Ex. 71; McDowell Depo. at 10, 17-18]

28. The McDowell study found that personnel costs -- consisting largely of teacher salaries -- were relatively uniform throughout the state. They found that although starting salaries were higher in rural Alaska, teachers in urban districts generally have greater longevity and were higher on the pay scale. [McDowell Depo. at 21-24]

29. Since 1998 the Legislature has twice commissioned experts to study the district allocation factors, and has made one adjustment to the factors based on its review of those expert analyses. [Tr. 2553-56; Exs. 213, 11]

30. Under earlier versions of Alaska's funding formula, the Legislature allotted additional money to school districts based on the actual number of students who were classified as bilingual, disabled or enrolled in vocational studies. [Tr. 2172-73] This type of additional funding is termed categorical funding.

31. Under the current funding program, a 20% addition is accorded to each district for special education students, irrespective of the actual number of such students in a district. This type of additional funding is termed block funding.

32. Statewide, the current number of special education students is approximately 14% of the total student population, which is similar to the national average. [Tr. 3744]

33. When categorical funding for special needs children was in place prior to 1998, the number of students in the special categories increased at a faster rate than the total number of students increased. [Tr. 2180, 2513-15]

34. The McDowell report that underlies the existing funding formula relied on actual existing costs to determine the school size adjustment factors and the district cost factors. [McDowell Depo. at 29-31] As a result, Mr. McDowell testified that student characteristics, including at-risk factors, would have been considered in establishing those adjustment factors in the formula. [Id. at 31-32] Moreover, the effect of school size, district cost, and the special needs factor is cumulative under the current formula – the factors are all multiplied together. As a result, districts with high costs factors or school size factors receive a considerably greater amount from the 20% special needs factor than districts such as Anchorage, which has low size and cost factors. [Ex. 2376]

35. As the Plaintiffs' expert, Dr. Salmon, acknowledged, "in most states as the percentage of poor kids increase, the funding generally decreases." [Tr. 1717] It is undisputed that that is not the case in Alaska. In Alaska, "the kids that are the poorest receive the most money on a per pupil basis." [Tr. 1717]

36. In the past few years, the Legislature has significantly increased the base student allocation and has appropriated additional funds intended to defray increased expenses including utility costs and the employer contribution to the Public Employees' and Teachers' Retirement Systems (PERS/TRS). [Tr. 2522-23]

37. When the impact of inflation is considered, the State and local contribution to education began to decline after 1988 and continued to decline into the 1990's. [Tr. 2086-92] During that same time, the number of public school students increased from approximately 101,000 students in 1988 to over 130,000 students beginning in FY 2000. [Ex. 439 at 57622] However, as a percentage of the total operating fund, state funding of education increased during that time from 24% of the state operating budget in 1988 to 32% of the state operating budget in 2000. [Ex. 2369]

***The State's Limited Oversight of School District Spending***

38. The Education Clause in the Alaska Constitution accords to the State Legislature the responsibility to establish and maintain schools within Alaska. Similar to most states, the Legislature has delegated substantial authority to operate the schools to the local school districts. ~~The extent to which the State~~ has retained oversight of the funds it disburses to the school districts is set forth in this section.

39. In order to receive state aid, school districts are required to submit a budget each fiscal year to EED, which reviews the budgets for compliance with statutory requirements. 4 AAC 09.110(a). EED will reject a budget that is "(1) not in the form required by the department; (2) not balanced; (3) does not meet the local effort provisions of AS 14.17; or (4) does not meet the minimum expenditure for instruction provision of AS 14.17.520." 4 AAC 09.120.

40. State law also requires that each school district submit to EED an independent audit of all school accounts for the school year. AS 14.14.050. The

Department reviews the audited financial statements to insure that the district has not accumulated "an unreserved year end fund balance ... that is greater than 10 percent of its expenditures for that fiscal year." AS 14.17.505(a) & (b).

41. State law also requires that each school district budget for and spend "a minimum of 70 percent of its school operating expenditures ... on the instructional component of the district budget," unless the district is granted a waiver from the State Board of Education. AS 14.17.520. This legislative requirement was adopted in 1998 and designed to insure that operating funds from the State that are allocated to school districts are spent on the education of children. [Tr. 2534] In the statute, the term "instructional component" is defined as "expenditures for teachers and for pupil support services." AS 14.17.520(f). However, the regulatory definition of "instruction" includes not only teachers, but ~~other costs such as staff travel, counselors, professional development, and school site administration, including the school principal.~~ [Tr. 2469, 2561; 4 AAC 09.115]

42. In 2003, 32 of the 53 school districts in the state were unable to meet the 70/30 requirement, meaning they failed to budget for and spend at least 70% of their funding on the instructional component. [Ex. 276] Every one of these districts received a waiver of the 70/30 requirement, even though the EED's Director of School Finance recommended against some of them. [Tr. 2495]

43. Commissioner Sampson has been critical of the 70/30 requirement, and has recommended that the Legislature revisit it. [Ex. 276] He noted there is "no direct correlation between districts that met the 70 percent requirement also

making Adequate Yearly Progress," which measures student achievement. [*Id.* at 2] This is consistent with his view that "money [is] not the predictor of student performance." [Tr. 2384]<sup>9</sup>

44. There is little indication in the record of legislative review of school district spending. For example, a budget request for supplemental funding for school districts prepared by EED and submitted to the Legislature by Governor Murkowski sought an additional \$20 million appropriation "to target effective instructional strategies" to help school districts "meet state targets in making adequate yearly progress." [Ex. 357] These additional funds were appropriated by the Legislature, but the Legislature did not impose any restrictions on how the funds were to be spent by the districts. [Tr. 2564-67] The evidence at trial also indicated that neither of the legislative finance committees have undertaken to ~~review how the school districts are spending the State funds appropriated to~~ them. [Tr. 3777]

45. State law provides that "State funds may not be paid to a school district or teacher that fails to comply with the school laws of the state or with the

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<sup>9</sup> Several states have adopted an approach to school funding known as the 65% solution. That approach requires that schools spend a minimum of 65% of their total operating expenditures of classroom instruction. *See, e.g.*, Ga. Code. Ann. § 20-2-171 (2006) (this law requires that each local school system shall spend a minimum of 65% of its total operating expenditures on direct classroom expenditures. Direct classroom expenditures are defined as "all expenditures by a local school system during a fiscal year for activities directly associated with the interaction between teachers and students, including, but not limited to, salaries and benefits for teachers and paraprofessionals; costs for instructional materials and supplies; costs associated with classroom related activities, such as field trips, physical education, music, and arts; and tuition paid to out-of-state school districts and private institutions for special needs students. This term shall not include costs for administration, plant operations and maintenance, food services, transportation, instructional support including media centers, teacher training, and student support such as nurses and guidance counselors."). *See also*, Kan. Stat. Ann. § 72-64c01 (2006) and Tr. at 3182, testimony of Gary Whiteley.

regulations adopted by the department.” AS 14.07.070. But apart from the State’s limited review of local school board spending decisions with respect to the statutory 70/30 requirement and the requirement that the year-end unreserved fund balance not exceed 10%, Commissioner Sampson indicated that he was unaware of any other action the State had taken with regard to a district’s spending decisions. [Tr. 2440]

46. The State exercises very limited oversight as to how a school district spends the money it receives from the State to educate the children that reside within that district.

#### ***Federal Impact Aid***

47. The federal government provides aid to school districts to compensate for a local community’s inability to tax certain lands, including Alaska Native Claims Settlement lands and military land. This aid is known as “impact aid.” It is intended to supplant, not supplement, state funding of local schools. Federal law has established an equalization test with respect to impact aid. As long as a state passes the federal equalization test, the state is allowed to consider this federal aid in the state’s distribution formula to school districts. In other words, federal law permits the state to treat federal impact aid as if it were state money subject to the state distribution formula. [Ex. 2274] Alaska has not failed the federal equalization test since 1988. [Tr. 2572]

48. REAAs are not required to make a local financial contribution to their school districts because of the status of the land in these communities. Instead, they are eligible for federal impact aid.

49. Consistent with federal requirements, 25% of the federal impact aid goes directly to the REAA and is not considered in the state funding allocation to the REAA. Of the remaining 75%, the state deducts 90% of that amount from the amount the REAA would otherwise receive from the state under the funding formula. [Tr. 2503-04]

50. Federal impact aid has been a stable funding source for the school districts in Alaska for many years and is likely to remain a relatively secure source of funding into the future.

#### ***Federal Grants***

51. Federal Title funds, including Title 1 funds, are often targeted at the needs of low income students and students with special needs. [Tr. 3739] Unlike federal impact aid, these funds are intended to supplement, not supplant, the state and local contribution to education.

52. Federal Title funds can fluctuate based on student enrollment. Also, the federal government tends to move funding from a program it does not deem as effective to one it does. Overall, however, the level of federal Title funding has been relatively stable over time. [Tr. 3721]

53. The State EED is responsible for monitoring the local school districts in the state with respect to their expenditures of federal funds. Barbara Thompson, from EED, who oversees this effort, indicated "all of the federal programs for which we receive funding have requirements, and we have a very comprehensive monitoring system to make sure that compliance is occurring." [Tr. 3683] This monitoring effort includes site visits at least once every five years

by EED to each school to review the expenditure of these federal funds. [Tr. 3694]

***D. The Assessments and Assessment Results***

***The State's Assessments***

54. The State has developed a system of statewide assessments that has evolved considerably over the years. At the time of the earliest state education profile contained in this record – 1989 – the State administered a “norm-referenced” test. [Ex. 2286] This type of test was an “off-the-shelf” test prepared by a national testing vendor. Results were tabulated based on the percentile rank of the students compared to other students nationally. [Tr. 2906] After the State began to develop content standards, it initiated a benchmark test that was Alaska-specific. The benchmark test was used for several years in grades 3, 6, and 8. [Tr. 2849]

55. Beginning in 2005, the State began using a new test, called the Standards-Based Assessment or SBA, in every grade. This test is aligned with the State standards, which means that it tests on the Alaska standards and it does not test on content that is not included in Alaska's standards. [Tr. 2846-49]

56. The items on the Standards-Based Assessment are carefully reviewed for consistency with the standards, freedom from bias, and cultural sensitivity. The question of what score constitutes “below proficient,” “proficient” and “advanced” is determined by a committee. [Tr. 2852] The record in this case contains a technical review that documents these processes. [Tr. 2841-55]

57. The State's current system of assessment is a significant educational reform for several reasons:

- The standards-based assessments are aligned with the State's standards.
- The assessments provide detailed data to educators – not just on the overall proficiency of students in a subject area – but also on how well the students are performing in the specific domains that make up a given subject area.
- The assessments are designed to be consistent from year-to-year and from grade-to-grade. Each student is assigned a specific identification number. This enables educators to engage in longitudinal studies, even when students transfer between districts. By tracking growth, educators will be able to identify and refine effective processes. [Tr. 2905-08]

58. The Plaintiffs and the State in this case agree that the State "has adopted constitutionally sound course requirements, instructional standards and testing criteria." Plaintiffs' Second Amended Complaint at 2.

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59. The Court finds that the State's current assessment system has been carefully implemented and is a significant educational reform designed to benefit children enrolled in Alaska's public schools.

***Assessment Results***

60. The State Board of Education has established four levels of student proficiency in the assessments it administers. The State's Report Card to the Public defines these proficiency levels as follows:

**Advanced.** Indicates mastery of the performance standards at a level above proficient.

**Proficient.** Indicates mastery of the performance standards sufficient to lead a successful adult life.

**Below Proficient.** Indicates mastery of some performance standards but not enough to be proficient.

**Far Below Proficient.** Indicates little mastery of the performance standards.

[Ex. 106 at 39]

61. Consistent with the federal No Child Left Behind Act (NCLB), the State has adopted standards to determine whether schools are making "adequate yearly progress" (AYP) toward NCLB's goal of 100% proficiency of all students by 2014.

62. The statewide results for the 2005 and 2006 Standards-Based Assessment results were as follows:

	<b>Standards Based Assessment Results 2005-2006 Percent of Students Proficient and Above</b>		
	<b>Reading</b>	<b>Writing</b>	<b>Math</b>
<b>2005</b>	77.6	73.6	64.8
<b>2006</b>	78.8	74.9	66.1

[Ex. 2237]

63. In considering the adequacy of the educational opportunity offered in the state as a whole, the percent of advanced students is of note. In 2005, 30% of students statewide tested as advanced in reading; 27.7% tested advanced in mathematics; and 17.7% in writing. [Ex. 2021 at 56603]

64. But the Plaintiffs have not focused on the overall performance of students in the state with respect to their claim that the system is constitutionally inadequate. Rather, they assert "there is an achievement gap that illustrates that not all Alaska students have access to a constitutionally adequate education."

[Plaintiffs' Proposed Findings at 59] The Plaintiffs point in particular to the considerable disparity in testing results between Alaska Native students and other students.

65. This achievement gap is apparent in nearly all testing results. One example from the record follows:

**Grade 3 Standards Based Assessment  
Percent of Students Proficient in Reading**

	<b>State</b>	<b>Caucasian</b>	<b>Alaska Native</b>
<b>2004-05</b>	79.1	87.4	62.0*
<b>2005-06</b>	78.9	87.8	60.1

\*Alaska Native and American Indian combined

[Exs. 114-115; Tr. 3007-17]

66. The Plaintiffs also refer to the achievement gap for those "far below proficient." According to Les Morse, EED's Director of Assessment and Accountability, about four times as many Alaska Native students are far below proficient in reading as Caucasian students. [Tr. 3020; Ex. 2235] There is a similar achievement gap for low-income children. Although the achievement gap indisputably exists, one of the State's experts, Naomi Calvo, demonstrated that even though the average proficiency for Alaska Natives and students who are eligible for free and reduced-price lunch in this state is, as a whole, lower than other students, there are many individual Alaska Natives and poor children who are scoring proficient and advanced. This is true in high spending districts and low spending districts, in rural districts and in urban districts, and in districts with high concentrations of poverty and low concentrations of poverty. [Tr. 2619-29]

67. The test scores of the three Plaintiff school districts in this case are among the lowest in the state. In 2005, Yupiit had the lowest percentage of proficient students of any school district in the state in reading; Kuspuk had the second lowest; and Bering Strait had the ninth lowest. [Ex. 2380]

Representative test scores are set forth below:

	<b>Adequate Yearly Progress (AYP) Scores Percent of Students Proficient in Language Arts</b>			
	<b>State</b>	<b>Bering</b>	<b>Kuspuk</b>	<b>Yupiit</b>
<b>2003-04</b>	73.0	37.4	30.6	15.3
<b>2004-05</b>	75.5	42.6	27.7	15.6

[Ex. 2458]

68. The record contains school-by-school detail for each Plaintiff district in each academic subject tested. Within Bering Strait and Kuspuk there is considerable variation in results among the schools. For example, in 2006 within BSSD, 80% of the children in Unalakleet were proficient in reading; in Brevig Mission, 28% were proficient. [Ex. 2387] Likewise, within the Kuspuk School District, at Crooked Creek 56% of the students were proficient in reading; at Lower Kalskag, 22% were proficient. [Id.]

69. The Kuspuk School District made AYP in 2005 under a safe harbor provision of NCLB that bases the AYP determination on a demonstration of a significant improvement from the prior year's test scores. [Ex. 149]

70. Test scores have also been improving in the Bering Strait School District in recent years. For example, the percent of children that have attained reading proficiency in Savoonga increased from 15% in 2000 to 34% in 2006.

[Ex. 2376] But as Dr. Davis observed, “[a]t this rate of progress we’re making, we’ve calculated about 40 to 50 years” before all children in Bering Strait will be proficient. [Tr. 168-9]

71. Similarly, Dr. Laster testified it would take about 69 years in Kuspuuk for all children in that district to be proficient at its current rate of improvement. [Tr. 1983] As the Plaintiffs correctly note, “even if districts are able to maintain the current rate of improvement, generations of children will be lost.” [Tr. 67]

72. The Yupiit School District has never made AYP. In 2006, it was at the second year of Level 4, meaning it had failed to make AYP for five years. In 2006, 18% of the children in both Akiachak and Tuluksak had achieved proficiency in reading; 32% of the children in Akiak had achieved reading proficiency. [Ex 2387]

73. In Alaska's Accountability Workbook to the federal government concerning NCLB and the failure of many Alaskan schools and districts to meet NCLB's annual measurable objectives (AMO), it provides “the state must establish the capability to provide the technical assistance necessary to ensure all students become proficient.” [Ex. 2273 at 43]

74. The record demonstrates that the achievement gap identified by the Plaintiffs has existed for many years. For example, in 1989, the percentage of sixth graders in the state overall that was in the bottom quartile nationwide for reading was 21.1% -- better than the national average. [Ex. 2286 at 17] But for Bering Strait, 52.7% of the sixth graders were in the bottom quartile that year, as were 54.5% in Kuspuuk and 86.4% in Yupiit. [Ex. 2286 at 33, 79, 127]

75. In 2005 – sixteen years later – 22.4% of fifth graders in the state were in the bottom quartile of the nation in language arts – still better than the national average. But for Bering Strait, 41.7% of fifth graders were in the bottom quartile, as were 60.7 % in Kuspuk and over 90% in Yupiit. [Ex. 109 at 5-6]

76. As Dr. Davis testified, “I think as a state, we need to begin to recognize [that] if we have profound learning challenges, students are testing consistently, generation after generation as performing less well than the majority of the population, then we ought to say it’s not enough to say, well, we gave them – we gave them equitable resources.’ We, as a greater community, have a real vested interest in making sure kids are educated; educated well. Not just from an economic point of view, but from a political point of view and a community point of view.” [Tr. 204]

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#### ***Other Assessments***

77. Alaskan students currently take tests that are administered nationwide. The State participates in the National Assessment of Educational Progress (NAEP), a federal testing program in reading and mathematics that is given every other year to a sample of student populations in the fourth and eighth grades. Students in Alaska are generally at or above the national average in mathematics at both grade levels. In reading, fourth graders are slightly below the national average, but eighth graders are at the national average. [Ex. 2247, 447; Tr. 2929-42] Given that Alaska has more English language learners than the national average, the improvement in test scores by eighth grade is encouraging. [Tr. 2931-36]

78. Many high school students in Alaska take national college entrance exams – the SAT or the ACT. Alaska has a higher participation rate than the national average in these exams. And Alaskan students score well above the national average on both exams in almost all years. [Ex. 2243; Tr. 2943-45]

***The High School Exit Exam***

79. In 1997, the Alaska Legislature mandated that all seniors graduating from high school must pass an exit exam in order to receive a diploma.<sup>10</sup> Students who do not pass the exit exam received a Certificate of Achievement instead of a high school diploma.

80. Originally, the test was to have been implemented by 2002; subsequent legislation delayed the implementation until 2004 and clarified that the test was to be a test of minimal competency in basic skills.<sup>11</sup> In its current form, the exam is designed to test for “the minimum competencies in essential skills in the areas of reading, English, and mathematics that a student should have to know in order to function in our society.” [Ex. 2270]

81. The legislative history of the exit exam reflects that this educational reform was a reaction by the Legislature to frustration that children were receiving high school diplomas but were lacking in basic skills. [Tr. 2946]

82. The Department spent seven years creating and refining the test, and giving students and educators notice about the test. [Tr. 2947-48] The delay between passage of the legislation and implementation of the exam requirement

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<sup>10</sup> Ch 58 SLA 1997.

<sup>11</sup> Ch 94 SLA 2001.

reflects the care with which the State proceeded before making this change to the education system.

83. The State acknowledges that “children have a property interest in their prospective diploma, and cannot be deprived of that property interest by a test that is unfair to them because they have not had notice of the content of the test.” [Defendant’s Proposed Findings at 78, ¶ 194]

84. The Plaintiffs’ complaint alleges that the exit exam violates students’ due process rights because it tests subjects that are not taught in the schools. For example, they assert that geometry is tested on the exit exam and that many high school students do not have the opportunity to take geometry. [SAC at 15, ¶ 54(d)] However, the level of geometry taught on the exit exam is no higher than eighth grade geometry. [Tr. 2965] Moreover, the Plaintiffs’ assertion that high schools do not offer high-school level geometry was unproven. All school officials who testified in this case testified that their secondary schools offered high-school geometry. Les Morse from EED testified that in his experience as an educator in rural Alaska, and as the state assessment coordinator working with over 700 teachers all around the state, he has not heard that geometry is not being taught in Alaska’s schools. [Tr. 2966-67] Plaintiffs have not established by a preponderance of the evidence that Alaskan students do not have the opportunity to study the requisite level of geometry before their senior year in high school.

85. As with other test scores, one of the Plaintiffs’ primary concerns is the achievement gap. A representative test result is set forth below:

**Grade 10 High School Exit Exam (HSGQE)  
Percent of Students Proficient in Reading**

	<b>Total</b>	<b>Caucasian</b>	<b>Alaska Native</b>
<b>2003-04</b>	70.1	81.8	43.5
<b>2004-05</b>	69.1	81.5	42.5

[Exs. 118, 19]

86. As then-Commissioner Holloway wrote when she released the results of the 2001 graduation exam (before passage of the exam became a requirement for the diploma):

The data I am releasing today will cause soul searching in Alaska. The analysis shows a deep divide in student achievement among ethnic groups. White students score higher than other ethnic groups, much higher on average than Native Alaska students. Why is this so? What steps do we need to take to shrink this divide? It's time for debate. It's time to find out. It's time for action.

[Ex. 68]

87. As with the other assessments, the Plaintiff school districts have performed considerably below the state average. A representative result follows:

**Grade 10 High School Exit Exam (HSGQE)  
Percent of Students Proficient in Reading**

	<b>State</b>	<b>Bering</b>	<b>Kuspuk</b>	<b>Yuplit</b>
<b>2003-04</b>	70.1	21.7	27.6	<20.0
<b>2004-05</b>	69.1	26.5	28.6	14.8

[Exs. 108-109]

88. The above charts show the results for 10<sup>th</sup> graders only. The pass rate for the high school exit exam is higher, but it is difficult to calculate because

students have up to five opportunities to take the exam, beginning in 10<sup>th</sup> grade. Also, the exam tests three subjects and students only re-take those subjects that they have not yet passed. [Tr. 2950] And some students drop out of school before graduation.

89. The high school exit exam is designed so that it should have a 100% pass rate for students who stay with the process. [Tr. 2948-60] Mr. Morse, the EED testing administrator, estimated the state-wide pass rate is currently about 90%, when all opportunities to take the exam are considered. [Tr. 2954]

***Graduation and Dropout Rates***

90. The graduation rate is computed based on the percent of students who began ninth grade that graduate from high school four years later. [Ex. 70 at 106] A graduate is defined as a student who has received a regular diploma. It does not include students who received a Certificate of Achievement because they did not pass the exit exam. [Id.]

91. In 2004, the graduation rate for the state as a whole was 62.9%. [Ex. 70 at 77] In 2005, the statewide graduation rate was 61%. [Ex. 108 at 57] The graduation rate for the American Indian/Alaska Native subgroup in 2004 was 47.5%. [Ex. 70 at 77-8] In 2005, it was 43%. [Ex. 108 at 57]

92. In the Plaintiff school districts, the graduation rates in 2005 were 37.2% for Bering Strait, 23.8% for Kuspuik, and 31.3% for Yupiit. [Ex. 109 at 3-4] Bering Strait's graduation rate has fallen significantly since 2002-03, when it was 59.4%. This may be due to the introduction of the exit exam requirement since that date, but also may be due in part to the "Quality Schools" program in place

there that allows students additional time to complete their studies past 12<sup>th</sup> grade. [Ex. 105 at 3-4]

93. All of the graduation rate statistics are somewhat misleading. They do not reflect students who have obtained a GED, do not capture all transfers, and do not include those students who leave early for college. [Tr. 3471] Nonetheless, Commissioner Sampson acknowledged that the State needs to improve the graduation rate for Alaskan students. [Tr. 2398]

94. The dropout rates in the Plaintiff school districts are also considerably greater than the statewide average. [Ex. 109 at 3-4] In 2005, the statewide dropout rate was 6%. The rates in Bering Strait, Kuspuuk and Yupiit were 11.4%, 8.7%, and 10.5%, respectively. [Id.]

95. While the dropout rate may be some indication as to whether an educational program is meeting a student's needs, the evidence showed that not all students drop out because of low academic achievement. Family and work commitments, among other reasons, may also be factors. [Tr. 3470]

96. Some students drop out because they are unable to pass the exit exam. School district superintendents such as Darrell Sanborn in Unalaska who have made it a personal priority to directly oversee the education of students who did not pass the exit exam on their first attempt would appear to be having a highly positive impact not only on pass rates for that exam, but on graduation and dropout rates in that district. In Unalaska, the dropout rate was 0.6% and the graduation rate was 96% in 2005. [Ex. 109 at 3-4]

***E. Accountability and No Child Left Behind***

97. The State's school accountability system disseminates the results of the testing to students, parents, and the community (with due regard for student privacy). AS 14.03.123.

98. Alaska's accountability system is in compliance with the No Child Left Behind Act, 20 U.S.C. § 6301 (2003), which required all states to adopt a NCLB-compliant system as a condition for receipt of federal aid. The State's NCLB-compliant accountability system was adopted into regulation by the State Board of Education in 2003. 4 AAC 06.800 - .06.899.

99. As of the time of trial, Alaska was one of only twelve states whose standards and assessment system had been accorded full approval by the federal government as being NCLB-compliant. [Tr. 2861; Ex. 2271]

~~100. The Legislature has delegated to the Commissioner of Education and Early Development (EED) the responsibility to do "all things necessary to cooperate with the United States government to participate" in No Child Left Behind. AS 14.50.010. Pursuant to that legislative delegation, EED has enacted regulations consistent with NCLB to demonstrate whether schools are making adequate yearly progress (AYP) toward NCLB's goal of 100% proficiency of all children by 2014. 4 AAC 06.805. These regulations include safe harbor provisions that allow a district or school to be determined to be making AYP based on a percentage improvement of proficiency among the student population. 4 AAC 06.810.~~

101. Each year of non-compliance with AYP is designated as a level. For example, a school that has failed to make AYP for four years would be designated at Level 4. [See generally Ex. 2272] For schools and districts not meeting AYP, the state regulations provide for a gradually increasing series of corrective actions, including the development and implementation of improvement plans. 4 AAC 06.840 -.850.

102. Under the accountability provisions of NCLB, school districts are required to intervene at schools within their districts that have repeatedly failed to make AYP. EED has developed an improvement planning document for districts to use "as an aid [to develop their plans] if they wanted to use it." [MacKinnon Depo. at 110]

103. For school districts that receive Title 1 federal funds that have failed ~~to make AYP for two consecutive years, EED is required to "take appropriate~~ action consistent with [the applicable federal regulations], including offering technical assistance [to the district] *if requested.*" 4 AAC 06.840(h)(emphasis added).

104. When a district that receives Title 1 funds has failed to make AYP for three consecutive years, EED is required "to prepare to take corrective action in the district." *Id.* at subsection (k).

105. When a school district has failed to make AYP for four years, EED is required to:

implement one or more of the following corrective actions in the district:

(1) defer programmatic funds or reduce administrative money provided to the district from federal sources;

- (2) institute and implement a new curriculum based on state content standards adopted in 4 AAC 04.140 and performance standards adopted in 4 AAC 04.150, including the provision, for all relevant staff, of appropriate professional development that
  - (A) is grounded in scientifically-based research; and
  - (B) offers substantial promise of improving educational achievement for low-achieving students;
- (3) work with the school board of the district to replace the district personnel who are relevant to the district's receipt of the designation;
- (4) initiate procedures to remove schools from the jurisdiction of the district and provide alternative arrangements for public governance and supervision of these schools;
- (5) in conjunction with at least one other action in this subsection,
  - (A) authorize students to transfer from a school operated by the district to a higher-performing public school operated by another district; and
  - (B) provide to these students transportation, or the costs of transportation, to the other school.

4 AAC 06.840(k). See also No Child Left Behind, Public Law 107-110 at Sec. 1116(c)(10)(C).

106. This regulation gives the State the authority to defer or reduce a limited portion of a district's Title 1 funds to attempt to obtain improvements within a district that is failing to make adequate yearly progress. [Tr. 2412] As Commissioner Sampson explained, under current state laws EED has only a very limited ability to direct resources within a school district – even with a Level 4 district -- “[i]t's no more than a 20 percent hold-back of Title 1 funds, not how they establish their other priorities.” [Ex. 2272; Tr. 2412] As of the date of trial, EED had temporarily withheld a portion of Title 1 funds pursuant to this provision on only one occasion – from the Yupiit School District in late 2005 through early 2006.

107. The AYP reporting requirements apply not only to the school as a whole, but at the subgroup level as well. Subgroups for this purpose include students with limited English proficiency and Alaska Natives, among others. 4 AAC 06.830. Pursuant to NCLB, if any subgroup within the school is not meeting AYP, then the school as a whole is not meeting AYP. 4 AAC 06.805(b)(1)(B).

108. As of trial, there were six districts at Level 4 under NCLB – districts that had failed to make AYP for at least 4 years. [Tr. 2879] EED had sent personnel to one of these districts, the Yupiit School District, in the fall of 2005 when that district had failed to submit a required district improvement plan.

109. In the fall of 2006, EED sent on-site teams to do instructional audits at three of the Level 4 districts, including Yupiit. [Tr. 2879] EED had also undertaken desk audits of the other three districts. [Tr. 2880] See 4 AAC 06.840(j)(2)(defining-parameters-of-audits):

110. Although the federal law and state regulations accord several options to the State when intervening, to date the State's actions in lower-performing districts has been limited. As explained by Les Morse at EED, "for the most part it has typically ... been a curriculum change, a new curriculum that has been adopted and put into place." [Tr. 2870] Specifically, he testified that many lower-performing districts have changed from a graded school to a performance-based school to achieve NCLB compliance: "we have a number of districts that rather than having students go from grade 3 to grade 4 because they've – because they've gotten older, they advance through a set of levels based on

performances versus just moving through grades, and that's the most common change that's occurred to date." [Tr. 2871]

111. Schools that make this curriculum change are required to appear annually before the Board of Education to obtain a waiver from the State's regulation that requires certain units of credit for graduation. 4 AAC 03.091; 4 AAC 06.075.

112. EED has provided technical support and has arranged conferences for school districts regarding NCLB compliance. [MacKinnon Depo. at 86-87]

113. NCLB also requires that teachers be "highly qualified." The State has defined this term and implemented this requirement in 4 AAC 04.210 – 4 AAC .04.212. Under the regulations, a teacher is qualified in "elementary education" – not in specific subjects. 4 AAC 04.210. But for middle school and high school, ~~there are a number of "core academic subjects," all of which are required to be~~ taught by highly qualified teachers. Among the subjects included are art, theatre, music, German and Spanish. Id. Although Yupit personnel have indicated that they sought to hire highly qualified vocation education teachers, there is no highly qualified designation for vocational education in Alaska regulations.

114. In the State's Accountability Workbook submitted to the U.S. Department of Education, it is noted that "the state must address a serious capacity issue at the [ ] EED. In order to comply with the many provisions of NCLB the [ ] EED must be provided with additional staff and resources required to assist districts and to implement the provisions of the accountability system." [Ex. 2273 at 16]

***F. Resources and Assistance Provided to School Districts by the State***

115. The State has presented extensive evidence, primarily through deposition testimony, of the considerable resources and assistance that EED provides to school districts. By and large, the evidence demonstrated that these resources and assistance are readily available to school districts that seek out the State's help.

***Teacher Mentoring and Principal Coaching***

116. EED began a teacher mentoring project in partnership with the University of Alaska in approximately 2003. The program is designed to reduce teacher turnover and increase student achievement by providing mentor support to first and second year teachers. [Tr. 2356-57] The mentors are "full release mentors," meaning they work exclusively as mentors and their salary and expenses are funded by the State. [Tr. 2366-67] Currently the State has approximately 30 mentors serving about 400 teachers. [Tr. 2356-57] The program involves multiple on-site visits to the school and frequent communication by telephone, e-mail, and video.

117. During the first year of the mentorship program, new teacher turnover was reduced approximately 15%. [Tr. 3152] Plaintiff NEA-Alaska's Executive Director Bill Bjork believes the program has demonstrated positive results, because "the mentoring experience helps teachers be successful at their site, and successful teachers stay." [Tr. 2269]

118. The Department has also established a coaching project for new principals. [Tr. 3153] The coaches are all retired principals and are assigned to

first and second year principals. Districts have requested that some third-year principals be allowed to participate, and EED has agreed. [Tr. 3153] Last year, the principal coaching project sponsored one on-site visit for each new principal and held four 2½-day institutes in Anchorage for all of the new principals. [Tr. 3154-56] Like the teacher mentoring program, participation by districts and principals is voluntary. [Tr. 3158]

119. The Department has also begun a voluntary superintendent coaching project for first-year superintendents. Last year, three of the five new superintendents in the state elected to participate. [Tr. 3161]

#### ***Reading First***

120. Reading First is a program that EED is administering through a federal grant. [McKeown Depo. at 20-24] Stacy McKeown is the director of EED's Reading First Program and testified by deposition. Reading First is part of "a nationwide effort to improve the instructional practices of teachers, with the long-term goal being all students reading at grade level by the end of third grade." [Id. at 20]

121. The program has three key areas – "one being assessment, one being professional development, and the other one is adoption of a research-based reading program, or a program that was developed using the very best research that we know of." [Id. at 21]

122. Eligible school districts throughout the state were encouraged to apply for Reading First grants. All three of the Plaintiff school districts were eligible for the program. [McKeown Depo. ex. 1 at 55392] Bering Straits applied

for the grant, but was not among the three districts that were selected. Yupiit and Kuspuk did not apply. The program is most effective in those schools in which there is a "buy-in [or public support] from ... the district and the community." [Id. at 100]

123. EED is working with the three districts that were selected for the grant to implement Reading First. EED pays for and trains the teachers, principals, reading coaches, and special education teachers in how to instruct students under the Reading First program. [Id. at 32] In addition, EED reviews and revises the school districts' individual Reading First instructional plans. [Id. at 34]

124. School districts that were not selected for the funded program were invited to a free conference to discuss the Reading First program. EED also provides technical assistance and support to the unfunded districts. [Id. at 72]

#### ***Formative Assessments***

125. EED has developed over 700 formative assessments that are available on-line free for teachers to use in the classroom, at the teacher's option. [Tr. 2356] These assessments are training materials designed to guide the teaching process in the classroom and are linked to the State's performance standards and assessments. [Tr. 3064-66]

#### ***Professional Development / Teacher Certification***

126. EED provides a number of professional development opportunities for teachers and other school district personnel each year. It has been

particularly active in assisting school personnel with the interpretation of assessment data so that teachers can use the data to direct their instruction. [Tr. 2351]

127. EED has also changed teacher certification requirements to include an assessment of the teacher's ability to effectively deliver content to students. [Tr. 2358-59]

***Instructional and Desk Audits***

128. EED has recently implemented regulations and procedures for conducting desk audits and instructional audits in districts that have failed to make AYP for several years. [Tr. 2885; 4 AAC 06.840(j)] These audits became possible only after the department became confident that its assessment system was "completely aligned to our standards." [Tr. 2890-91]

129. In a desk audit, the department conducts an in-depth analysis of student testing results. From this audit, the department determines which districts have shown less improvement. For those districts, it conducts a curriculum instructional audit. [Tr. 2889-90]

130. The curriculum instructional audit is a detailed on-site analysis of the curriculum. During an instructional audit, the Department analyzes a school district's instructional processes. It seeks to determine whether the district has a coherent curriculum and a program of professional development that is "actually showing up in the classroom." [Tr. 2890] At trial, EED indicated it intended to conduct instructional audits in three districts during the 2006-07 school year. [Tr. 2892]

131. Dr. Davis had requested an instructional audit from EED for Bering Strait's lowest performing schools before EED had actually finished developing the instrument, but the Department did not make it available to that district because BSSD had not reached the requisite threshold of such poor school performance under the regulation to qualify. [Tr. 2403] However, EED has made detailed test data from its testing contractor available to districts, and has sponsored a training for districts as to how to analyze and use the data. [Tr. 2355-56, 2404-05, 2984-86]

#### ***Consortia***

132. A number of consortia in the state work to provide additional education support. For example, the Art Education Consortium writes grants and provides training and coursework for art studies. [Sugar Depo. at 101] The Alaska State Council on the Arts also promotes art in the schools, and sponsors both trainings and direct instruction. [Tr. 2357-58] It sponsors a program called Artists in Residence, which arranges for artists in various mediums to travel to schools throughout the state at no expense to the school district, other than transportation costs. [Tr. 2358]

#### ***Correspondence School Options***

133. Alaska has a range of correspondence school options for children who do not wish to or are unable to attend regular "brick and mortar" schools. The adequacy of the education at these schools was not at issue in this litigation. [See MacKinnon Depo. at 44; Miller Depo. at 101]

### *Technology*

134. The three Plaintiff school districts each have very high student to computer ratios. In Yupiit, there are more computers for students than there are students: 447 students and 502 computers. Bering Strait has one computer for every two students, and Kuspuk has one computer for every three students. [Miller Depo. ex. at 55694]

135. EED assists school districts in obtaining federal E-Rate funding, which permits school access to technology at substantially reduced rates. [Tr. 3712-14]

136. Both BSSD and Kuspuk have received competitive grants for technology development. [Miller Depo. at 98-99] Yupiit has never received such a grant because it has never applied for this funding, although EED has invited the Yupiit School District to technical assistance sessions to help the district apply. EED's program manager for educational technology testified regarding the Yupiit School District, "sometimes it's the vision of the superintendent. I don't think they have a vision of using technology to move things forward." [Id.]

137. Based on the current status of distance learning technology, EED's technology manager testified "I think every district could choose to offer AP courses through distance learning." [Id. at 103] She cited several examples of school districts in Alaska that have expanded their course offerings to students through this medium, including the Lower Kuskokwim School District, Southwest Region, Bering Strait, Northwest Arctic, and the Pribilofs. [Id. at 104-06]

138. This Court finds that videoconferencing is an option for many students for many courses throughout Alaska, and has particular value when there are only one or two students within a school that are interested in a particular class. Although not without its challenges and limitations, videoconferencing represents an effective tool for allowing students access to content areas that might not otherwise be accessible to them. [See, e.g., Tr. 3091-92]

139. Like most resources offered by EED to the districts, EED's technology support is "strictly voluntary ... Our goal is to talk about tools they could be using and also courses they could be accessing." [Id. at 110]

#### ***Special Education***

140. The State regulates special education more heavily than it does almost any other aspect of education. Districts are required by both state and federal law to provide free and appropriate public education to all eligible special education students. The State monitors districts for compliance with state and federal special education law and funding, and holds conferences to train districts about special education. The State also administers procedures for parents to use when they believe a school district is not in compliance with special education law, including administrative complaints, mediation and due-process hearings. [Tr. 3741-44]

#### ***Migrant Education***

141. The State applies for and passes on to school districts federal funds for migrant education, and assists districts in planning migrant education

programs. [Tr. 3690-91] The State is also responsible for monitoring the expenditures of these funds by the districts for compliance with federal law. [Tr. 3683]

142. In Alaska, these funds are often used to provide learning materials to children who are engaged in fishing or other subsistence activities with their families. [Tr. 3694-95]

#### ***Performance Incentives***

143. In 2005, the Legislature adopted a performance incentive program. AS 14.03.126. The program provides incentive payments to all employees of schools that show designated improvement. [Tr. 2388-89] The program was initially funded by the Legislature with \$5.8 million. [Id.] In the view of Commissioner Sampson, "I think it is a practice that has tremendous potential to bring schools together as a team, to be noncompetitive with one another, and share very effective strategies and focus, aligning instruction to the standards." [Tr. 2388]

#### ***Other Resources Available from EED***

144. The State has a number of other resources available for school districts and educators that seek assistance or support from the State. These include the following:

- Counselor support services, including an on-line training course for counselors, a training guide for program development of a K-12 counseling program, training in crisis response, and suicide prevention are available on request from EED. As explained by

EED staff, "how the schools choose to use counselors is totally up to the districts. And if they ask for our programmatic and technical support, we offer it, but they don't have to." [Danitz Depo. at 15]

- EED has a library consultant available on request from school districts to help librarians and library aides in schools throughout the state. Yupiit has taken advantage of this resource. [Tr. 583]
- Training, information and support on fetal alcohol syndrome, including a web-based training course, is available on request from EED. [Brocius Depo. at 23-24]
- Grant writing assistance is available on request. [Tr. 3774-75]
- The State assists schools that seek accreditation. [Mehrkens Depo. at 26]
- The State provides assistance regarding budget preparation and reporting requirements to school districts.
- Upon request from a district, EED is willing to travel to a district and provide assistance directly in requested areas, including "classroom observation to improve instruction, to interpreting data, to developing formative assessments." [Tr. 2405]

145. To better help school districts access the resources of the EED, the State has assigned a staff person to each district as a contact person to facilitate that district's communication with EED and access to its resources and assistance. [Tr. 1604]

*Pre-kindergarten and the Ready to Read; Ready to Learn Task Force*

146. Many of the witnesses who have testified in this case support the development of pre-kindergarten education, including Commissioner Sampson. [See, e.g., Tr. 2374, 3400-01, 3641-43]

147. Alaska is one of only ten states that does not offer a government supported pre-K program. [Tr. 2393]

148. In recent years, a task force named Ready to Read, Ready to Learn developed several recommendations regarding early education. Among their recommendations is that Alaska develop a statewide system of voluntary and affordable early childhood education. Such a system, the task force indicated, should be community-based and offer a variety of options to parents. [Ex. 424 at 3, 11] Several witnesses expressed concerns about pre-K education becoming a part of the K-12 school system, and believed that preschool children could be better served outside of the school system with a model that included more parental involvement. [See, e.g., Tr. 3401]

149. Pre-kindergarten education is currently available for disabled children. [Tr. 3403]

150. The State also assists with Head Start. It has provided about \$6.1 million annual funding for this program. [Tr. 3747] In addition, it has provided trainings for both school districts and Head Start programs that seek assistance in how to better communicate with the families of preschool children. [Sugar Depo. at 66] Last year, Head Start served approximately 3,600 children in about 100 communities. [Id. at 85]

### ***School Facilities***

151. The Plaintiffs' Second Amended Complaint does not allege that school facilities in this state are inadequate and the prayer for relief does not seek any capital expenditure for school facilities.

152. At trial, the Plaintiffs presented some limited evidence regarding school facilities in the state. For example, they asserted that there is a lack of "dedicated facilities for curricular areas such as art, music, physical education, and science" in school buildings in the state. [Ex. 3 at 754] But the quality of school facilities has not been directly at issue in this litigation. [See, e.g., Plaintiffs' Proposed Findings of Fact at 135-140] To the extent the current quality of school facilities is intended to have been at issue, the Plaintiffs failed to establish by a preponderance of the evidence that the school facilities in Alaska are constitutionally inadequate.

## ***II. Facts about the Plaintiffs***

### ***A. Plaintiffs Kristine and Gregory Moore***

153. The Moores live in Wasilla, Alaska with their three school age children, Jason, Shannon and Mallory.

154. The Matanuska Susitna Borough School District does not contribute funding for education up to the maximum permitted by AS 14.17.410, a fact which is relevant since the Plaintiffs are asserting that it is the State alone that is inadequately funding education. [K. Moore Perp. Depo. at 36, Disc. Depo. at 75]

155. Two of the Moore children have for the most part performed proficiently in public school; the one child of those two who is old enough to have been tested has done well on state assessments. [Moore Perp. Depo. at 32-33]

156. Ms. Moore home-schooled one of the Moore children for approximately one year in 2004-05, but after meeting with the school principal, she decided to enroll the child back into the public school system. [Moore Perp. Depo. at 16]

157. One of the Moore children has had difficulty in school, and is sometimes removed from the classroom for behavior problems. The Moores recently sought and obtained an educational evaluation for that child. At the time of Ms. Moore's depositions in July 2006, the Moores appeared to be working satisfactorily with the school with respect to that child's behavior and educational needs. [Moore Disc. Depo. at 59-65]

158. Kristine Moore has been active in the PTA at her children's schools since 1998. She is also active in regional and state PTAs as well as other education-related community advocacy groups, including committees with the State Board of Education. [Moore Perp. Depo. at 7-11] Ms. Moore testified that she has been successful in her political activities and lobbying efforts in increasing school funding. [*Id.* at 35-36]

159. Ms. Moore indicated that she filed this lawsuit because she does "not feel that my children have access to the same resources, and abilities, and programs, and education -- the quality of education that I had as a student." [Moore Perp. Depo. at 23] However, she testified that she believes her children

have had good teachers in general and was unable to identify any specific programs that were missing for her children other than smaller classroom sizes and more study of the humanities. [Moore Disc. Depo. at 17, 77]

***B. Plaintiffs Martha and Wayne Morgan***

160. Martha and Wayne Morgan reside in Aniak; their children attend school in the Kuspuk School District. [Tr. 2278-79; M. Morgan Depo. at 6-8] Mr. Morgan indicated that English is the primary language spoken in the community and at the school. [Tr. 2295]

161. Ms. Morgan works in the payroll department at the Kuspuk School District. [M. Morgan Depo. at 5] At the time of Ms. Morgan's deposition in March 2006, the Morgans' oldest child, age 15, was taking classes in Aniak in reading, writing, math, shop, physical education, and technology. [*Id.* at 7] He also plays basketball and travels on the school team four times during the school year. [*Id.* at 9-10] At school, he was making a canoe with his class in shop, had his own web-site, was learning Word and Excel in technology, and was studying health in P.E. [*Id.* at 8-10] From Ms. Morgan's perspective, "it would be nice to see a music class, drama class, home economics, [and] a journalism class that includes photography" taught at the high school as well. [*Id.* at 13] The Morgans' four-year-old child had been attending a two-year preschool program in Aniak administered through the school district with grant monies. [*Id.* at 22-23]

162. Wayne Morgan is the president of the school board for the Kuspuk School District. In that capacity he has a role in determining the school district's curriculum, staff salaries, superintendent compensation, and budget. AS

14.08.111. Mr. Morgan indicated he is also very active in other aspects of public service – serving on the tribal council, the Native association, and various fish and game groups at the local, state and federal level, as well as coaching and volunteering at the local school. [Tr. 2279]

163. Mr. Morgan testified that he believes “the children of Kuspuk and elsewhere need[ ] a well-rounded education ... having choices or opportunities to experience some sort of skill or a possible career maybe after high school. And ... choices also for the upper-level-achieving kids and the lower-level.” [Tr. 2282]

164. Mr. Morgan was concerned about the exit exam and the impact it may have on students dropping out: “There’s so much focus to pass [the exit exam] and I think there’s more to life than just passing the exit exam.” [Tr. 2284]

~~165. Mr. Morgan indicated that he felt he was accorded more educational opportunities when he was in school in Aniak, graduating in 1984. He had classes in photography, foreign languages and pottery, which have not been available to his children. He also believes there were more teachers. And he remembered that everyone graduated then. Now, he is “saddened by the kid who [does not] get the diploma but still walks.” [Tr. 2286-88]~~

166. Mr. Morgan felt that the Kuspuk schools have good principals and teachers and indicated that they are paid among the highest in the state. [Tr. 2291] He also noted that the district has internet and video teleconference facilities [Tr. 2291-92], a recently established aviation ground school [Tr. 2296], a guidance counselor [Tr. 2296], local dancing and cultural weeks at the school [Tr.

2297], science and physical education classes, and four different school sports.  
[Tr. 2285, 2290]

167. Ms. Morgan testified that four Aniak high school students had elected to attend boarding school at either Mt. Edgecumbe or Galena, where it is perceived they would have more academic opportunities. [M. Morgan Depo. at 29]

168. Mr. Morgan is opposed to greater state involvement in how the local school district spends its foundation money and determines its curriculum. As he stated, "that would take away the local control." [Tr. 2297] He believes the State should assist and work with the school districts, but not control them.

***C. Plaintiffs Maggie and Mike Williams***

169. The Williams reside in Akiak, which is within the Yupiit School District. Their children have attended the Akiak School. Mr. Williams is the president of the Yupiit School Board, and has been on the board for 21 years. [Tr. 1506-07] In that capacity, Mr. Williams has a role in determining the district's curriculum, staff salaries, superintendent compensation, and budget. AS 14.08.111. Mr. Williams also served on the State Board of Education for approximately 7 years in the 1990's. [Tr. 1507]

170. Mr. Williams testified that he, along with other local community members, became involved in the development of the Yupiit School District in the early 1980's because "we wanted to get into having our people and our parents and our community starting to get involved in shaping our educational program — because of what kind of changes we were seeing in the communities with our

kids, and no involvement from parents.” [Tr. 1516] In his view, “the overall goal was to have a culturally relevant program.” [Tr. 1519]

171. From the outset of his involvement with the Yupiit School District, Mr. Williams has viewed a major challenge to be ensuring that a culturally relevant program was provided to students when the teaching staff was from outside of the district, and often from outside of the state. [Tr. 1522]

172. Mr. Williams also expressed considerable concern over the low test scores of the students within the district: “Ever since I became a board member, our test scores have been very unacceptable.” [Tr. 1530]

173. He also expressed concern about the impact of teacher turnover: “I’ve heard many of those kids ask the new – brand-new teachers that arrive in the fall, ‘Are you going to come back next year?’” [Tr. 1532] When asked why the turnover existed, he opined that it was burnout, or a desire to get back to the road system – “Life is a lot harsher out there.” [Tr. 1533] The board has tried, with some success, to reduce turnover by improving teacher housing and by initiating a college course that is designed to introduce teachers and administrators to the way of life within the school district. [Tr. 1551-52]

174. Mr. Williams testified that the school district is providing vocational education skills at each school. [Tr. 1540] While he believes that art and music should be part of education, the district does not currently employ certified art or music specialists “[b]ecause we don’t have the resources.” [Tr. 1542] However, he acknowledged that the arts are offered at the Yupiit schools, but typically by

local community members, school aides, or elders, and not by a certified art teacher. [Tr. 1597, 1607]

175. To address the district's drop-out rate, Mr. Williams indicated that the district was considering hiring a counselor to work with individuals who have dropped out by engaging them in a project to renovate buildings in the district while they worked on obtaining a high school diploma. He testified these individuals could then be added to the student count in the State's foundation formula, which would provide funds to support that program. [Tr. 1602]

176. Mr. Williams indicated that the state troopers have not been responsive to requests from the school district to enforce the truancy laws. [Tr. 1572]

177. Mr. Williams indicated that the school district has tried to address student achievement by trying to align the district's curriculum to state standards, by offering tutoring after school hours, and by seeking to engage community elders in the importance of education. [Tr. 1553] He acknowledged that a prior superintendent told the school board that the achievement struggle of the district "is more a lack of will than a lack of resources." [Ex. 2130; Tr. 1593]

178. Mr. Williams indicated that the three new schools that the district had received were a welcome and much appreciated addition to the communities and had resulted in an improved attitude by both students and parents. [Tr. 1556]

179. Mr. Williams testified that if the district received additional resources, it would seek to hire highly qualified vocational education, music and physical education teachers. [Tr. 1556] He would also complete those portions

of the new schools that were not finalized because of insufficient funds, such as the outside playground. [Tr. 1556] Mr. Williams also felt that a liaison position between the school and the students' homes could benefit the school community. [Tr. 1603] And he indicated that in order to improve student achievement, the district should consider having a full-year program, offer more tutoring, and also offer additional resources via the Internet. [Tr. 1557]

180. Mr. Williams testified that he believed it is the responsibility of the local school board -- and not the State -- to determine how the district should spend the money it receives from the State. [Tr. 1566]

181. He noted that there has been a designated state person from EED assigned to the school district for some time, "but I think they have stepped up their presence ... mainly consulting with the district and to work on the strategies to help meet the accountability standards ... I've noticed that ... they have really begun to work with our district staff and those staff that need to ... work on those standards." [Tr. 1604]

182. Mr. Williams and the other school board members did not directly participate when EED personnel came to the school district in the fall of 2005 -- "It was between our staff and the State." [Tr. 1573] With respect to that State involvement, Mr. Williams indicated, "it is welcomed ... any kind of help is welcome ... We are in full support of [the AYP] goals." [Tr. 1574]

***D. Plaintiff Jerry Dixon***

183. Plaintiff Jerry Dixon was a teacher with the Kenai Peninsula Borough School District from approximately 1990 to 2000. During that time, he

taught a special "Quest" program for gifted and talented younger children. He left his position with the district both because the district required him to transfer to the high school and because he was dismayed at the programs that were being eliminated by the district. [Dixon Disc. Depo. at 16-29]

184. Mr. Dixon has two children who have attended public school in Seward. He was quoted in 2002 as saying, "Seward has excellent schools and superior teachers." [Dixon Perp. Depo. at 16] However, he believes that since that time a number of programs have been eliminated which has impacted the quality of the schools. [*Id.* at 16-21] Most notably, the Quest program that he taught has been eliminated. Nonetheless, he testified that his children have done very well in Kenai Peninsula Borough schools. [Dixon Perp. Depo. at 22-28]

***E. Plaintiff NEA-Alaska, Inc.***

185. NEA-Alaska represents over 13,000 teachers and educational support professionals. The organization's current president, Bill Bjork, testified in this proceeding. He has been a teacher in several Alaskan schools during his career. He testified that the organization "exists to advocate for quality schools and for the professional and economic interests of our 13,000 members." [Tr. 2233] With quality public schools, "our people can be successful ... and an adequate level of funding is critical so that we can have quality schools." [Tr. 2255]

186. Mr. Bjork stated that there had been two decades of relatively flat funding for education, but that beginning in 2003, "the legislature provided enough money to cover inflation." [Tr. 2243]

187. NEA-Alaska seeks adequate funding for education in this case. Mr. Bjork defined adequate funding by referring to the NEA-Alaska's web site: "Adequate funding means schools have the resources to offer opportunities for all students to achieve up to the standard -- ..." [Tr. 2262; Ex. 2028] He defined adequate by reference to a dictionary definition: "sufficient and satisfactory." [Tr. 2262]

188. In Mr. Bjork's view, a pupil-teacher ratio of 18 to 1 is ideal, based not on the total number of teachers, but on the number of students with one teacher in a classroom. [Tr. 2263]

189. Mr. Bjork readily acknowledged that "there is nothing in the world that can take the place of an engaged parent" when it comes to a child's education. [Tr. 2259] But he added, "the absence of ... an engaged parent can't be an educational death sentence for this student." Instead, he opined that schools must take up the slack in those circumstances. [Tr. 2273]

190. NEA-Alaska's members have a direct economic interest in education funding as well as a direct professional interest in providing high quality education to Alaska's students.

***F. Plaintiff CEAAC***

191. Plaintiff Citizens for the Educational Advancement of Alaska's Children (CEAAC) is a nonprofit organization formed in approximately 1997. Its members include a number of school districts in the state, including each of the three Plaintiff school districts in this action. [Ex. 211; Jorgenson Depo. at 6, 171-

172] Spike Jorgensen is CEAAC's executive director and testified by deposition in this case.

192. CEAAC's purposes include ensuring "that the state of Alaska complies with its constitutional ... obligation to provide a quality education for the children of Alaska." [Ex. 211 at 21546] CEAAC has a direct interest in this litigation and seeks to obtain additional funding from the State for its members.

### ***III. The School District Plaintiffs***

#### ***A. Bering Strait School District***

193. Bering Strait School District (BSSD) is a REAA located at the west coast of Alaska. The district serves fifteen widespread and diverse Alaskan villages, and has a total enrollment of approximately 1700 students. [Ex. 109; Tr. 213] The area includes villages on the Seward Peninsula and Norton Sound as well as on St. Lawrence and Little Diomed Islands. [Ex. 44 at 18833] The distance between the two furthest schools in the district is approximately 350 miles. [Tr. 213, 147]

194. The superintendent of the district is John Davis, Ph.D., who was the first witness to testify at the trial in this case. At the time of trial, Dr. Davis had been the superintendent of BSSD for seven years. [Tr. 143; Ex. 2008] Dr. Davis was described to this Court as "an outstanding educator" by the Commissioner of Education, Roger Sampson, and this was clearly established by the evidence at trial. [Tr. 2361] Dr. Davis demonstrated deep conviction and dedication toward improving the quality of education for all children in the Bering Strait School

District, and has achieved substantial success in that regard during his tenure as superintendent.

195. The communities within BSSD vary in terms of lifestyle and student performance. Many children in the communities of Gambell, Savoonga and Diomede speak Siberian Yup'ik as their primary language. [Tr. 147-148]

196. The largest school in the BSSD is Savoonga, with 219 students and 21 certified staff members. Savoonga is located on St. Lawrence Island in the Bering Sea. [Tr. 254]

197. Several of these schools have consistently failed to make Adequate Yearly Progress (AYP) on state assessments. [Ex. 2387 at 57678-80; Tr. 160]

198. Unalakleet and White Mountain are two other schools within the district. These schools have made AYP in recent years. [Tr. 160] Dr. Davis testified that although "it shouldn't be," in his experience educational success increases as the number of generations in a family with education increases. [Tr. 299] As school board member Melvin Otton noted in his deposition, Unalakleet had a private school as well as a BIA school before statehood, so "parents that attended there, their view of education was more engrained than in a lot of the other communities." [Otton Depo. at 54]

199. Close to 100% of the students in the district are Alaska Native, and over 80% of the district is limited English proficient.

200. BSSD received \$21,265 per student (ADM) in state and federal operating (non-capital) funds in 2005. [Ex. 2321]

201. During Dr. Davis' tenure as superintendent, the BSSD school board has made many critical improvements in the quality of education within the school district. [Tr. 237-38] From Dr. Davis' perspective, the key to the district's success to date has been that "we've changed our basic philosophy. It's not about what you want to do. In other words, it's not about you; it's about what students need." [Tr. 164-65]

202. In recent years, BSSD has fully implemented throughout the district a reading program entitled "Success for All," which is an intensive, scientifically-based reading program developed at John Hopkins University. BSSD has devoted considerable time and expense toward staff development with respect to this program. [Tr. 239-43] BSSD is also striving to actively engage parents in their child's education by asking parents to sign off on homework and read with their children during the evenings. [Tr. 167] In order to obtain the funds necessary to fully implement and maintain the "Success for All" program, the district made the decision to reduce 'non-core' personnel at the district, such as counselors and vocational educators, and direct its funds toward this reading curriculum. [Tr. 315]

203. BSSD has also implemented the Quality Schools Model. Under this model, the district has eliminated traditional grades and moved to proficiency standards. The model requires that a student demonstrate proficiency on a certain topic, no matter how long that takes to achieve, before moving on to the next subject matter. [Tr. 165-66, 244] A student does not graduate until he or

she demonstrates a specified level of proficiency in all core areas of learning. [Tr. 244-47]

204. BSSD has made staff development a priority in its funding and resource allocation decisions. [See, e.g., Ex. 51, Response to Interr. # 12 which details the extensive professional development activities sponsored by BSSD during school years 1999-2005.]

205. Since the implementation of the "Success for All" reading program, BSSD student reading achievement has increased considerably, and several schools have improved their reading test scores by 100%. [Tr. 243-44]

206. In 2006, 46% of the children in the district were proficient in language arts, and 37% of the children were proficient in math. [Ex. 149] By comparison, in 2003, 34% of the students were proficient in language arts and 33% proficient in math. [Ex. 152]

207. In BSSD, 7 out of 15 schools made AYP in 2006. [Tr. 223] Three of those seven schools made AYP under the safe harbor provisions. [Tr. 223] The district as a whole has failed to make Adequate Yearly Progress, and is at the most extreme level of noncompliance – Level 4, year 2. [Tr. 2413]

208. The district has had a high dropout rate. Approximately 34% of students at BSSD who began ninth grade graduated from high school in 2006. [Ex. 149] This compares to the statewide graduation rate of 55.58% in 2006. [Ex. 156]

209. Kerry Jarrell, the Chief Financial Officer of the Bering Strait School District, also testified at trial. Mr. Jarrell has worked for the district for 21 years.

210. Revenues that Bering Strait School District received in Fiscal Year 2005 are reflected in Exhibit 2107, which is the financial audit for that year and the most recent audit available at the time of trial. In that year, the district received \$38.57 million in non-capital government funds that were available for operating expenses. Of that amount, the district spent \$37.22 million, leaving a surplus of over \$1.3 million that year that the district retained for use in later years. [Ex. 2107 at 14, columns 1 and 3]

211. During the 2004-05 school year, the district budgeted to spend \$16.74 million on general instruction expenses. However, that budget was later modified and only \$15.76 million was spent -- the unspent remainder of nearly \$1 million was saved for future years. [Ex. 2107 at 16, columns 2 and 3] This surplus is part of the over \$1.3 million surplus identified above.

~~212. BSSD is one of the few rural districts in Alaska to consistently meet~~  
the "70/30" state requirement regarding allocation of funds for instructional expenses. [Tr. 154]

213. Dr. Davis' testimony that he and the school board have redirected the district's funds and resources to the classroom is fully supported by the district's financial documentation. That documentation indicates the following:

- In 1996, BSSD had 184 certified staff; in 2005, the district had 204 certified staff -- an increase of 20 certified staff. During that same period, the number of students (ADM) was relatively unchanged -- 1,679 in 1996 and 1,699 in 2005. [Ex. 2107 at 35070] Based on

these figures, the 2005 overall pupil-teacher ratio in BSSD was approximately one teacher for every eight students. [Cf. Ex. 2384]

- The amount BSSD has devoted to general instruction increased from \$11.94 million in 1996 to over \$20 million in 2005. Likewise, the amount devoted to special education increased from \$1.48 million to \$2.5 million during this same time frame. And the amount spent on support services (defined as counselors, librarians and professional development) nearly doubled during that time frame from \$595,884 to \$1.14 million. The large majority of the support service funds went toward professional development costs associated with the implementation of the "Success for All" reading program. During that same time frame, the total combined cost of ~~district and school administration was actually reduced~~ from approximately \$3.4 million to \$2.5 million per year. [Ex. 2107 at 35067]<sup>12</sup>

214. Part of the reason that BSSD's surplus in FY 2005 was so high was because the State allocated additional funds to public schools late in the fiscal year. With respect to those additional funds, Mr. Jarrell testified that those funds were not spent because "[w]e didn't simply hire teachers to reduce the pupil-teacher ratio willy-nilly," and in part because of the problem of committing to additional staff in the face of uncertain future revenues. [Tr. 606, 612]

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<sup>12</sup> None of these figures has been adjusted for inflation.  
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215. Mr. Jarrell testified as to extensive cuts that had been made to the BSSD's program over the years. For example, he indicated that the number of counselors in the district had been reduced from 12 to 2. [Tr. 430] But based upon this Court's review of the financial and other district information submitted by BSSD, this Court finds that the reduction in those particular personnel was a consequence of the board's intentional redirection of funds into the classroom rather than a result of budget cuts. For example, BSSD staff's proposal to the school board for staffing in 2006 recommended a minor reduction in the hours of several educational aides in the district from the prior year, but also recommended the hiring of three new full time certified teachers – two in Savoonga and one in Golovin. [Otton Depo. ex. 7 at 26255]

216. In recent years, the State has provided BSSD with several new schools. This year the district is receiving an additional three new schools. [Tr. 150]

217. If more resources were made available to BSSD, Dr. Davis would like to add year-round staff so that the entire summer could be used for teacher training. [Tr. 225] But Dr. Davis acknowledged that his view on such a program is not necessarily shared by the school board. [Tr. 300] Currently, BSSD staff starts about one month in advance of the students each fall. Dr. Davis would also like to develop summer programs for the students, supplemental and remedial services for the students, and the district's own mentorship program. [Tr. 170-71, 199]

218. Dr. Davis noted, "Money will allow us to change things, but ... without direction, without purpose ... I'm not in favor of just spending money for spending money's sake." [Tr. 177] Dr. Davis opined that many students in poor rural areas in Alaska score poorly on achievement tests because some districts "haven't effectively directed those resources that we have." [Tr. 233] He also testified that "[t]here are districts [that] don't use resources wisely." [Tr. 232]

219. Within the last five years, BSSD has incorporated distance learning into its student instruction. The district has received over \$7 million in technology funding in the last five years, and its technological capability is excellent. [Tr. 273-75] Through distance learning, BSSD offers math, science and Spanish. Distance learning has reduced travel expenses and students are now able to participate in activities such as the "Battle of the Books" reading competition via videoconferencing. [Tr. 156, 275-76] BSSD also has a student broadcasting team which broadcasts on the web each week. The students have highlighted the Iditarod sled dog race, interviewing mushers and others. [Tr. 276-78; Ex. 2009] BSSD's website also depicts student activities including students traveling to Fairbanks to participate in the University's Geophysical Institute. Additionally, the website features student poetry, shop class projects such as kayak building, and cultural activities involving elders teaching students about Yup'ik traditions. [Tr. 281-284; Ex. 2009]

220. All communities within BSSD are accessed by air. BSSD maintains its own airplane, storage facility, pilot and mechanic. [Tr. 149-52] Although disputed to some degree by the State, this Court finds, based on the

district's available revenue, immense size and remote school sites, that the airplane is not an unreasonable use of district funds.

221. BSSD has several sports teams, including cross-country skiing, basketball, wrestling and cross-country running. These teams travel both throughout the district and to other districts by air. [Tr. 285-86]

222. BSSD has three itinerant teachers that provide vocational education in the district. [Otton Depo. ex. 7 at 26258]

223. BSSD has partnered with the other school districts to form NACTEC, a vocational center in Nome. [Tr. 290-92] This program recently received an additional \$3 million appropriation from the State to build dormitories for rural students. [Tr. 526] Among the course offerings is an intensive two-week motor vehicle driver training class. [Otton Depo. at 136]

~~224. BSSD has implemented a skills camp, which is a week-long~~ intensive focus for those students who have had trouble passing the State's high school graduation qualifying exam. Since the skills camp has been implemented, Dr. Davis indicates that the student pass rate on that exam has increased substantially. [Tr. 294]

225. Dr. Davis testified that in his view, education in the fine arts is not as critical as education in core subjects such as English, math, and science. [Tr. 188-94] With respect to world languages, BSSD schools are teaching Yup'ik language and culture, and many children are already bilingual in Yup'ik and English. [Tr. 194; Ex. 2081 at 5655, 5659] Dr. Davis considers education in other languages to be a lower priority than some other content areas in the Bering

Strait School District, but would like to be able to offer foreign languages to those students who have an interest in it. [Tr. 195] Such an approach appears consistent with the school district's mission statement: "to educate our children to become self-sufficient and responsible citizens through quality programs that express high expectations for all in a safe, supportive and collaborative learning environment that reflects our children's heritage." [Ex. 2007 at 26349]

226. Dr. Davis testified that small schools in Alaska should not be expected to offer all of the courses available in large schools. [Tr. 303] Instead, his position is that "we should offer an adequate education." [Tr. 302]

227. BSSD board member Melvin Otton testified that a small rural school such as Koyuk has its advantages over an urban school such as Anchorage. Because of the considerably lower pupil/teacher ratio, there is the advantage of more interaction with the teacher. ~~Moreover, in his view, there is~~ the advantage of closeness to nature that rural life provides. [Otton Depo. at 131-32]

228. In BSSD, teacher turnover has been reduced significantly in the last several years and is down to 11% district wide. [Tr. 214] The schools in Savoonga and Wales had zero teacher turnover in 2005-2006. [Tr. 253] Additionally, BSSD is able to promptly replace departing staff and has no vacant positions. [Tr. 255] In Dr. Davis' view, teacher retention has improved because teachers have a sense of professional satisfaction as a result of the positive changes at BSSD. [Tr. 255, 262] Dr. Davis testified that money will not inspire a teacher to remain teaching. [Tr. 255] However, Mr. Jarrell, BSSD's chief financial

officer, did note that in his opinion BSSD has the best compensation package for teachers of any rural entity in the state. [Tr. 528]

229. Dr. Davis defines an adequate education as "an education that gives young people the tools to succeed in whatever life they choose." [Tr. 304] Dr. Davis testified that his own children and many other students attending BSSD are receiving an adequate education, but that is due in part to the supplemental activities and education that these children, including his own, receive from their families. [Tr. 308] Dr. Davis later qualified his testimony by stating that, overall, education within BSSD was not adequate "[b]ased on the evidence of the assessment" – that is, based on the district's results in state testing. [Tr. 323] In his view, by the standards required of the Commissioner of Education, "we are not successful; by standards based on where we were, where we're going, we are successful." [Tr. 304] He also testified that he "would like to see an early childhood program," and that the University needs to turn out teachers better prepared to teach in rural Alaska. [Tr. 324-25]

230. School Board member and Plaintiff Melvin Otton testified by deposition in this case. Mr. Otton indicated he has been on the BSSD board for 18 years, with the goal of "improving education for our children." [Otton Depo. at 12-13] Mr. Otton attributed the improved testing scores at BSSD to a combination of things. He viewed the implementation of the district's reading program, "Success for All," as a critical component. And he added "probably one of the biggest factors is the parents' involvement," noting that the "Success for All" program requires the children to read to someone at home 20 minutes a

day. [Id. at 36-37] He also attributes the success of Bering Strait to its focus on core subject areas, its reliance on technology and its use of strategic planning. [Id. at 20, 47-48]

231. When asked why some schools in the BSSD were not showing as much improvement as others, Mr. Otton indicated that some of the reason might be problems in the community, such as use of drugs and alcohol and excessive bingo-playing. [Id. at 59] And some of the reason might be personnel related – some schools might have stronger principals or staffs. [Id. at 50] Mr. Otton added:

And the other thing that probably plays a part is the community as a whole, how does a community view education. And my view – and this is my personal view - is that some of those communities that have low scores, some of the parents are not involved to an extent to where they are ensuring that their child have enough rest, that they are at school constantly, that the child's behavior is conducive to learning. Those type of things. They play a part.

[Otton Depo. at 50] Mr. Otton testified that he felt his children's education at BSSD is adequate. But he added, "to be on a more equitable basis with other students they probably could have used a little more opportunities." In this regard, he proposed a structured music course. [Otton Depo. at 134-35]

232. Dr. Davis has conferred with Commissioner Sampson regarding those schools within BSSD that are not yet demonstrating success. Dr. Davis has asked the Commissioner for assistance: "If you've got an idea on how we can make it work better in this community or that community, I'm open. Let's not wait any longer, you know, partner with me." [Tr. 2361]

233. Dr. Davis has requested specific funds and assistance from the Department which has not been provided. BSSD was not awarded one of the Reading First grants. BSSD was not able to obtain an instructional audit from the Department, even for its schools that had repeatedly failed to make AYP, although BSSD requested it. [Tr. 2403] Given that in some of the BSSD schools, less than 20% of the children are proficient in some subjects, this decision by the State to refuse to provide this assistance is of concern. [Ex. 2387 at 57678-80] But Dr. Davis also acknowledged the ways in which the State has been particularly helpful, including its assistance after the White Mountain fire, its mentorship programs, its development of content and performance standards, and the overall philosophical change that the State EED has developed – which Dr. Davis characterized as a change in working for the school districts, and not the other way around. [Tr. 327]

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234. The Plaintiffs have failed to establish by a preponderance of the evidence that the additional services that BSSD seeks to provide to its students could not be provided to those students using the funds that are currently available to the district. Although the district's audited financial statements for several years were submitted as exhibits to this Court, no budget analysis to demonstrate the lack of available funds for the additional services sought was presented. As Mr. Jarrell acknowledged, Alaska law accords to school districts the discretion as to how to spend the revenues it receives. [Tr. 503] Indeed, the testimony indicated that BSSD had substantial unspent funds at the end of the

2005 fiscal year, which presumably could be devoted toward such resources should the district elect to do so.

235. Based on the evidence presented at trial, this court finds that the children in the Bering Strait School District are being accorded a meaningful opportunity to achieve proficiency in reading, writing, math and science, and are also accorded the opportunity for meaningful exposure to the State's other content standards. This is due both to the adequacy of the resources that have been provided to the district and the effective use of those resources that has been made to educate the children that reside there.

***B. Kuspuk School District***

236. The Kuspuk School District is a REAA with ten schools in eight villages serving approximately 414 students. [Ex. 2011 at 58416-22, Ex. 2321] ~~The district is located along the Kuskokwim River in western Alaska, from Stony River to Kalskag. The majority of the population is Yup'ik or Athabascan. [Tr. 1934] The majority of students have limited English proficiency (90%) and are low income (80%). [Tr. 1934]~~

237. The current superintendent of the school district is Dr. Martin Laster, who testified as a witness at the trial in this case. He was named Superintendent of the Year in Alaska when previously employed at Craig. At the time of trial, Dr. Laster had been at Kuspuk for just one year. [Tr. 1929-30]

238. The evidence at trial demonstrated that student achievement has increased significantly during Dr. Laster's brief tenure as superintendent at Kuspuk.

239. The Kuspuk School District and six of its schools made adequate yearly progress in the 2005/06 school year, a considerable improvement over the prior year. [Tr. 1937; Ex. 2444 at 11] However, a majority of these schools and the district made AYP through the safe harbor provisions. [Ex. 149] Overall, in 2006, approximately 35% of the children in the district were proficient in language arts and about 26% in math. [Ex. 149] The school in the small village of Red Devil has made AYP, despite its small size. [Tr. 1962; Ex. 2387 at 57682] The performance of small schools can vary greatly from one year to another, and the performance of a few children at such a school can affect whether the school makes AYP. [Tr. 1990; Ex. 2387]

240. In 2005, the Kuspuk School District received total operating (non-capital) revenues of \$21,758 per student (based on Average Daily Membership) from federal, state, local and other sources. [Ex. 2321]

241. The district has taken considerable steps to integrate technology into its curriculum and instruction. In a technology grant application, the district's then-superintendent noted, "just increasing bandwidth and providing hardware will not magically enhance curriculum and instruction. How the district uses technology in the classroom and trains staff is critical in addressing standards so that our students are successful in the traditional as well as the global society. We must provide high-quality professional development for our teachers." [Ex. 2313 at 56213]

242. The district offers several video teleconference classes, including aviation/ground school, algebra, geometry, newsletter/yearbook, advanced English, and guidance counseling services. [Ex. 2311 at 56210]

243. The school district's web site also indicates that it offers courses in cultural expression and the arts, as well as physical education, science, mathematics, and advanced placement literature, among other courses. [M. Morgan Depo. ex. 3]

244. The Kuspuk School District employs the standards-based model of instruction. The school board actively supports this non-graded standards/mastery based approach to student learning, sometimes called the quality school model, and recruited the current superintendent with that in mind. [Tr. 2291]

--245.-- Dr. Laster testified that many children in the district come to school with limited English proficiency, and speak primarily in Yup'ik -- a language with an oral, not written, tradition. Because of this background, many students come to school with less ability to learn to read and write English than students in many other parts of the state. [Tr. 1936] But Dr. Laster also sees many strengths in the district, noting the strong support from many parents and from the school board. He described the board as "innovative and ... wanting to do whatever it takes to help their children be the best they can be." [Tr. 1935] Further, this Court has reviewed Kuspuk's district and school improvement plans that have been filed with this Court and finds that they, too, demonstrate a clear direction and

motivation to improve student performance with clearly articulated strategies toward that end. [Ex. 2108]

246. Dr. Laster explained the curriculum changes in math he had made based on teacher recommendations during his first year as superintendent. He also insured that the district staff obtained professional development to implement that curriculum. [Tr. 1938] He has strived to realign the district's curriculum to conform to the State's standards. [Tr. 1994] This Court was fully persuaded by Dr. Laster's statement that "we are in good faith really working to try to get those core competencies to students: reading, writing and math. But it's really important to have an interdisciplinary approach; [a]n approach that respects the community that kids come from, the culture that they come from, that engages them in a way that grabs them and has them working on stuff that is really meaningful to them." [Tr. 1975-76]

247. Dr. Laster listed the various teachers he would like to add to the district. These positions included a librarian/reading specialist, more teachers at the middle grade levels, nurse/social worker positions, and a certified specialist in each of the arts, music, and world languages to serve the entire district. [Tr. 1944-45] He acknowledged that there is currently some art and music taught in the villages as part of the cultural learning component of the schools' instruction. [Tr. 2004-05] Dr. Laster testified that with adequate resources, he believes it is a reasonable expectation to achieve 100% proficiency in the Kuspuk district by 2014. [Tr. 1983] He added, "Whether it's realistic or not, it is the expectation." [Tr. 1941]

248. Dr. Laster described an adequate education as having two components. First, an adequate education would accord to a student the ability to pass the high school graduation qualifying exam, show proficiency on the Standards Based Assessments, and meet the content standards or graduation requirements. Second, Dr. Laster believes there is a more philosophical component to an adequate education – the ability to be successful in both the traditional and global societies. [Tr. 1955]

249. The Kuspuks school district has about 414 students. A review of Kuspuks' website as of September 20, 2006 indicates the following positions are each staffed at the district office:

- Superintendent
- Teacher, SPED
- Family Literacy Director / Teacher, primary
- Vocational Counselor
- Education Support
- Federal and State Programs Director
- Student Services Coordinator
- School Readiness Coordinator
- Director of Special Education
- Media Center Coordinator
- Director of Curriculum and Instruction
- Curriculum Support and Technology Director
- Technology Communications Coordinator
- Community Learning Center Director

[Ex. 2011]

These positions are in addition to the ten other positions identified on the website at the district office for facilities maintenance, business manager, maintenance and support, systems engineer, etc. [Ex. 2011 at 58415-16]

250. The Plaintiffs failed to present any evidence that all of these district-level positions were essential to the operation of the district, such that the

funds that were expended for at least some of these personnel could not be instead directed toward the students' classrooms and the various additional staff that Dr. Laster seeks to hire for the district. [Ex. 185, proposed cost saving measures for the District Office] <sup>13</sup>

251. Testimony was provided about the school in Red Devil, which has 14 students from K through 12, with just one teacher. Dr. Laster testified that three teachers there would be the ideal number to meet all of the students' needs. This Court inquired why there was only one teacher at that site, since the amount of funding received for those 14 students would approximate \$300,000, (14 x \$21,758 per ADM) and the average teacher salary was approximately \$50,000 plus benefits. No clear response was given, other than the lack of certainty in funding had caused the available resources to be directed elsewhere. Certainly, the Plaintiffs' own description of the challenges of educating children at a school as the sole teacher would appear to support directing more of the district's resources away from the district offices and into the school sites. [Ex. 2407 at 7-12]

252. Overall in the district, the pupil/teacher ratio is 13 students for every 1 teacher, but this includes the certified personnel at the district office. [Ex. 2384]

253. A review of Kuspuk's June 30, 2005 audited financial statements reveals the following:

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<sup>13</sup> The Court notes that Commissioner Sampson testified that "the first thing that happened" when he arrived at the Chugach School District as its superintendent was that he reduced the number of certified staff in the district office from 7 to 2 - "myself and an assistant." [Tr. 2332]

- During FY 2005, the district's net assets increased from \$3.577 million to \$4.142 million. [Ex. 182 at 22994]. Liquid assets increased from \$472,597 to \$1,095,747. [Id. at 23019]
- The "highlights" section of the district's 2005 financial report states: "The overall financial position of the district has greatly improved from the previous year with an increase of fund balance of \$412,691." [Ex. 182 at 22995 (emphasis in original)]
- The district's financial report identified the current financial issues facing the district as (1) maintenance of enrollment; (2) increased cost of health insurance; (3) increased PERS and TRS contributions; and (4) increased costs of fuel. No other budget challenges were identified as necessary to provide for the education of Kuspuk's students. [Ex. 144 at 22995-96]

254. In FY 2005, the statewide average for administration expense per student (ADM) was \$1,167. For Bering Strait, the amount was \$1,423. Certainly one would expect a higher than average administrative expense for that district simply given the logistical challenge of the schools' locations. For Kuspuk, the administration expense per student that year was \$2,587. [Ex. 2381]

255. The Plaintiffs did not present persuasive evidence as to why the Kuspuk School District did not spend some or all of the extra funds it had in 2005 toward the hiring of new teachers or instructional support staff.

256. The Plaintiffs have failed to establish by a preponderance of the evidence that the additional services that Kuspuk seeks to provide to its students

could not be provided to those students using the funds that are currently provided to the district. Although the district's audited financial statements for several years were submitted as exhibits to this Court, no budget analysis to demonstrate the lack of available funds for the additional services sought was presented.

257. The evidence at trial was inconclusive as to whether children within the Kuspuks School District are currently being accorded a meaningful opportunity to receive an education in the State's content and performance standards. While the Plaintiffs have failed to persuade this Court that the resources allocated to this district are insufficient, the evidence at this time is inconclusive as to whether the resources in that district are being adequately directed to student learning so as to accord to the children in that district a meaningful education. The gravamen of this case, as Plaintiffs have expressly asserted, has been about funding. Very limited testimony was presented about Kuspuks's curriculum, its alignment with the State's standards, the professional development available to its staff, the communities' involvement in their schools, and the other components of its educational system. But it does appear that under Dr. Laster's leadership, the district is making significant headway toward providing a meaningful opportunity to learn for the children of this district.

**C. Yupiit School District**

258. The Yupiit School District consists of three schools: Akiachak, Tuluksak, and Akiak. Akiachak School has approximately 210 to 215 students from kindergarten through 12<sup>th</sup> grade (K-12). Akiak School has about 100

students K-12; and Tuluksak School has approximately 160 students K-12. [Tr. 1025] Together, the district has about 475 students. Other than the children of teachers, all of the students are classified as Alaska Native and over 80% have limited English proficiency (LEP). Most of the children's first language is Yup'ik. [Tr. 1026-27] The district is in the Kuskokwim River basin in western Alaska.

259. In 2005, the district's overall student/teacher ratio was about 11 to 1. [Ex. 320] During that fiscal year, the district received total operating revenue per student (ADM) of \$22,578. [Ex. 2321]

260. The State has recently provided the Yupiit School District with new schools for each of its sites. Akiachak's new school opened in December 2005. Cynthia Reilly, the district's former business manager, testified that the children take a lot of pride in the new schools, particularly since they had so much less for so long. [Tr. 3536-37]

261. The record in this case includes a video of the new schools. [Ex. 2025] The Tuluksak School is representative. It is bright and airy, and integrates local culture in its design. It has a chemistry lab with extensive supplies in the cupboards, a home economics classroom with a stove and other kitchen equipment, a counselor's office, a music room complete with equipment such as music stands, and a science lab. There is a full size gym, including extensive gym equipment in which a number of children can be seen playing basketball on the video. (Evidently the wrestling mat is being improperly stored because a stand has not been purchased for it, which will diminish its useful life.) There were large bathrooms for the students with modern conveniences. A large

stainless steel commercial kitchen adjoined the lunchroom. There is a computer lab with approximately 20 new computers with flat screen monitors. There appeared to be new large screen televisions on the walls in the classrooms, and many computers are present in the classrooms as well. A note on a blackboard offered piano lessons and gave a phone number. The library appeared quite welcoming with many different types of reading environments – sofas, chairs, etc.<sup>14</sup>

262. During the filming of the video, there was a class going on in the shop room. There is an extensive staff workroom in the school. Some of the rooms were not being used for their intended purposes. For example, evidently the school board might be meeting in the home economics room when it meets in Tuluksak.<sup>15</sup> In contrast to the interior of the school, the playground was in disrepair, with the lone basketball hoop leaning over precariously.

263. A negative consequence of the new schools is that the district's utility bills have substantially increased due to the larger size of the facilities which has been compounded by the increase in cost of fuel itself. [Ex. 197]

264. Yupiit's test scores are the lowest in the state. In 2006, the district failed to make Adequate Yearly Progress for the fifth year in a row. Twenty percent of the students in the district as a whole tested proficient or higher in

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<sup>14</sup> During the filming of the video, it was pointed out that the encyclopedia set was quite dated – from 2000. However, evidence submitted at trial indicated that in 2003, Yupiit had received a grant for library materials, but failed to spend all of the grant within the requisite time, despite repeated notices from the State. As a result, \$68,000 of the grant funds were lost and not used to acquire more library materials at that time. [Prussing Depo. at 34, 39]

<sup>15</sup> But see Slats Depo. ex. 2, which lists courses for home economics, weight lifting/conditioning and health/P.E., among others, as being offered in Akiak. Moore, et al. v. State of Alaska, 3AN-04-9756 CI Decision and Order  
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language arts; 19% tested proficient or higher in math. The graduation rate for the district that year was 25%. [Ex. 149] However, the scores do show some improvement from prior years. For example, in 2003 less than 15% of the students were proficient in language arts and approximately 7% were proficient in math. [Ex. 2245C]

265. Allen Stockton testified at trial. He is the principal of the Akiachak School. He has been Akiachak's principal for one year; for nine years prior to that he was a certified social studies teacher in Akiachak. [Tr. 1021-22, 1059] Although a new principal, Mr. Stockton chose not to participate in the State's coaching program for new principals. [Tr. 1066]

266. Mr. Stockton testified about the skills he has learned while teaching at Akiachak: "You learn how to change the way you teach from the way you were taught... ~~The longer you're there, the more you understand where they come from, their history, what the people in that region have been through, what they've experienced. You start to get a small glimpse of where they're coming from.~~" [Tr. 1023]

267. Akiachak's classroom teacher/pupil ratio is 16 to 1. [Tr. 1076-77] In addition to the regular classroom teaching staff, Akiachak also has a counselor specialist with a background in social work and three classroom aides who are Yup'ik and speak the Yup'ik language. The school has a special education teacher, together with three special education aides (19 students are special needs students). [Tr. 1025, 1077-79] Akiachak also has a half-time literacy coordinator who helps in the Yup'ik immersion classroom and with one-on-one

reading instruction. The school also has a guidance counselor with a background in social work who also provides one-on-one counseling to students. When the additional certified staff are considered, the pupil/teacher ratio is approximately 12 to 1. [Ex. 320]

268. Akiachak offers vocational education courses, including carpentry. It also offers geometry and a regular math course to its 8<sup>th</sup> graders. The school is now moving toward an integrated math series, in which all basic math disciplines are offered in four, one year courses. Akiachak has also taught pre-calculus principles and planned to offer advanced placement calculus in 2007. [Tr. 1061-62] Akiachak also offers "Math Lab" for students who are not achieving up to their grade level in math. [Tr. 1063]

269. Akiachak offers study in geography, government, and at least three levels of language arts. There is also a journalism class that includes publication of a monthly paper that is distributed in the community. After-school tutoring recently became available at EED's insistence after it went to the district in the fall of 2005. [Tr. 1064-65, 1079-80]

270. Akiachak also offers physical education. [Tr. 1065] And the school has a variety of sports teams, including cross-country, wrestling, girls volleyball, boys and girls basketball and Native Youth Olympics. Every sports team travels outside the district to destinations that include Anchorage, Dillingham, Bethel and Bristol Bay. [Tr. 1066-67] Students who want to participate in sports are never turned away. [Tr. 1068]

271. Mr. Stockton testified that in his view, the Akiachak school needs the following additional resources: more training for paraprofessionals, another literacy or reading specialist, and everything "from more custodial time to more training, more aides, more classroom instructors." [Tr. 1030] He also sees a benefit in having a community liaison to work with families to explain the importance of attending school and state testing. In this regard, he noted, "[s]ome of our parent[s] and grandparents have such a distaste in their mouth from the way the western education system has been presented to them ... they're not as likely to become involved." [Tr. 1044] The Yupiit School District provides instruction in arts and music with an emphasis on local arts and dancing. It also has classes in health and nutrition. [Exs. 2115, 2115A; Tr. 1596-97]

~~272. The new Yupiit schools are wireless and fully equipped with new video conferencing, computer equipment, and high speed internet access. However, Yupiit has chosen not to pursue student courses in distance learning. Mr. Stockton indicated the technology was unreliable. [Tr. 1069, 3543] Cynthia Reilly, the district's former business manager, testified that many of the teachers took distance delivery courses and that students could have done the same thing, "but ... it just never was emphasized." [Tr. 3543] As a result, the Yupiit School Board does not have any courses available through distance learning. Art classes are taught by members of the community which has been funded for several years by grant monies. [Tr. 3543-44]~~

273. The Yukon-Kuskokwim Health Corporation (YKHC) has clinics and social workers in all three Yupiit villages to provide mental health services. YKHC is involved with the schools in areas such as suicide prevention, tobacco use, and other health issues. [Slats Depo. at 55-58]

274. Dr. James Smith, one of the State's experts in this case, testified that he visited the Akiak School on an in-service day, but no organized in-service was occurring, and one teacher was watching tapes of NFL football. [Tr. 2701] But he also testified that he "found each and every one [of the teachers] to be articulate, enthusiastic and motivated to teach the kids at Yupiit." [Tr. 2700]

275. Joe Slats testified by deposition in this case. Mr. Slats resides in Akiachak and is the superintendent of the Yupiit School District. He assumed this position in the fall of 2000.

276. At the time of Mr. Slats' deposition in 2006, his administrative certification from the state had lapsed, and he indicated he needed to take additional coursework before he could renew it. [Slats Depo. at 38-40] There was no indication in the record that any action had been taken by either the district or the State with respect to Mr. Slats' certification status. See AS 14.20.370; 4 AAC 12.325.

277. Mr. Slats indicated that in recent years, staff turnover in the district has been reduced and that the past year the district had to hire the fewest number of replacement teachers in the history of the district. [Slats Depo. at 48]

278. To help new teachers understand the local culture and language, the district offers a University-level course at no cost to all of the teachers on Yup'ik language and culture. [Id. at 50-51]

279. Mr. Slats indicated that the district has six vocational educational teachers. He added, "We do have very fine shop classes at all three sites." [Id. at 72]

280. If provided with additional funding, Mr. Slats indicated that he would first seek to hire highly qualified vocational education teachers and fine arts teachers at each of the three sites. He would also aim to hire a social worker at Tuluksak and a person to address the alternative needs of those students that are not college bound. He would also consider bringing on an itinerant nurse for the schools. Salary increases for current staff would not be a priority, as he believes the current salaries paid by the district are competitive. [Slats Depo. at 109-11]

281. In Mr. Slats' view, "academics [are] not for all students;" he believes the Yupiit schools should offer more than academics. [Slats Depo. at 128-29] He indicated the low test scores of the children attending Yupiit Schools was because "our students are ... not fluent in this language or any language." [Id. at 124]

282. Mr. Slats is considering establishing an alternative program for drop-outs, and was intending to present a proposal on this topic to the school board at its next meeting. [Slats Depo. at 77-80]

283. The district also has a curriculum director who has been working over the past several years to develop age-appropriate culturally relevant materials. [Tr. 1049] However, Cynthia Reilly, the district's former business manager, testified that even though the school board sets the curriculum "it doesn't get really enforced. So I would say that [the curriculum] is kind of set by the teaching staff of the year and their principals at each site." [Tr. 3545]

284. In a survey to staff from November 2005, considerably less than half of the teachers surveyed indicated that the district curriculum contains clearly defined standards, learning objectives, timeframe and pacing guides or suggested and required textbooks and instructional materials. [Prussing Depo. ex. 5 at 54902] Approximately 55% of the teachers indicated that the district's curriculum was not usable or helpful to the teachers in planning their lessons. [Id.] ~~Over 90% of the teachers indicated that the curriculum was not communicated to the children's parents. [Id.]~~

285. Although the district has failed to meet AYP for many years, Mr. Slats indicated that no new curriculum had been adopted by the board. Akiachak had implemented an alternative governance plan as required by NCLB. He explained this plan as a decision to hire a person who is working on attaining administrative certification from the state, to act as "dean of students" to address student discipline issues. This is planned so that the principal can be "more of an education leader for the teachers and would have more time to work with teachers in classrooms." [Slats Depo. at 147]

286. Cynthia Reilly was called as a witness on behalf of the State. Ms. Reilly was the business manager at Yupiit for approximately five years until June 2006. [Tr. 3520-21]

287. Ms. Reilly testified that in her view, "there were sometimes [funding] decisions made that had other priorities besides the classroom ... Maybe cultural, maybe personal, well-being of the superintendent." [Tr. 3564] When asked what type of oversight the State had over financial decisions made by the board, Ms. Reilly indicated, "I think they see our budget and they see our financial statements on a month-to-month basis. I don't believe that they look too closely, that I know of." [Tr. 3565]

288. A comparison of Yupiit's operating budget between FY 2004 and FY 2006, demonstrates the following:

- ~~Total revenue over this two-year period increased from \$6.2 million to \$7.48 million – a total of nearly \$1.5 million – due primarily to increased funding from the State of Alaska.~~
- During that time, the amount spent on instruction by the district increased only \$102,000 – from approximately \$2.69 million to \$2.79 million.
- During that same three-year time frame, spending for administration at the school sites decreased about 4.9%.
- Meanwhile, spending at the district office for administration and administration support increased over 37% during that same time period – from \$448,694 to \$616,656 – an increase of over \$160,000

– an amount considerably greater than the dollar amount increase spent for instruction.<sup>16</sup>

[Ex. 2106]

289. No explanation at trial was provided as to why the additional funds that the district received were directed primarily toward a substantial increase in expenditures at the district administrative offices. Despite the increased funding, the number of teachers in the district decreased from 46 in FY 2004 to 39.5 in FY 2005, while student enrollment increased from 434 to 445 students during that same time. [Ex. 2282]

290. The low level of student achievement at Yupiit is long-standing. In 1991, Yupiit's schoolchildren had a national percentile rank between 3% and 12% in national testing administered at that time. [Ex. 174 at 5302]

~~291. One of the Plaintiffs' experts, Dr. Ray Barnhardt, a professor at the~~  
University of Alaska, has been involved in educational improvement efforts in Yupiit for some time. Dr. Barnhardt testified by deposition about a ten-year study sponsored by the National Science Foundation that resulted in "a full complement of rural school reform initiatives in place [to stimulate] a reconstruction of the role and substance of schooling in rural Alaska." [Ex. 18 at 3] Yupiit was one of the districts that participated in the study, which emphasized the use of culturally responsive educational standards. [Ex. 18 at 4; Barnhardt Depo. ex. 13]

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<sup>16</sup> Dr. Van Mueller, one of the Plaintiffs' experts, testified the reason he focused on the schools and not the district when conducting his curriculum audit is because "the heart of instruction is at the [school] building, not the district office." [Tr. 743]  
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292. In Dr. Barnhardt's view, there is "every indication that you can provide every bit as good of an educational experience in a small village school as you can in a large urban school. You just have to do it differently, and the problem is how do you get teachers, districts, schools and so on to the point where they do something different?" [Barnhardt Depo. at 33] In his view, a small school "can provide a range of options that have the same long-term effect in terms of students having the opportunity to learn the knowledge and skills that they need to function as adults in whatever arenas they're going to work in." [Id. at 35] He testified that "a basic, adequate curriculum ... could be done in a small school, and it could be done in a way that those students would be every bit as well prepared as students who go to a larger school, they just wouldn't have as many items on the smorgasbord to choose from, just the main difference between the small and large schools." [Id. at 163-64] In his view, the key to success is a "strong principal, effective leadership, involvement of the community ... [and] a major shift in the curriculum." [Id. at 146]

293. That Yupiit's achievement has remained low even after Dr. Barnhardt's ten-year involvement with the school district is evidence of the deep-seated nature of the problems in this district.

294. Under state regulations effectuating NCLB (4 AAC 06.805-899), school districts that do not make adequate yearly progress for several years in a row are required to prepare and submit a district improvement plan to the EED. In late 2005, Yupiit had failed to submit the required plan for over one year, despite repeated requests from EED for the plan. [Tr. 2360]

295. Because the district improvement plan had not been submitted, EED withheld \$670,000 from the district in Title 1 federal funds for several months. These funds were withheld contingent upon Yupiit's filing of an acceptable district improvement plan. [Tr. 2360-65, 3163-73; Ex. 201] Barbara Thompson from EED testified that it was this withholding of funds that finally got the district's attention. [Tr. 3733]

296. In late 2005, EED sent three people to Yupiit to assist the district in formulating its improvement plan. In addition, two EED staff went at the same time to conduct monitoring of NCLB and federal grant compliance – a monitoring visit that is scheduled for all districts at least once every five years. [Prussing Depo. at 130; Tr. 1070-72, 2361-65, 3163; McKeown Depo. at 82-86]

297. Gary Whiteley, an independent consultant, headed the team from EED that went to Yupiit. ~~Mr. Whitely testified that on the first day he met with~~ Yupiit staff to review their curriculum. Based on that review, he determined that the district had "a wide range of partially implemented programs ... [t]here wasn't a particular level of coherence." [Tr. 3168] Mr. Whiteley testified that he told Mr. Slats that the district was a "mile wide and an inch deep. You have so many initiatives and so many things going on that I think you need to decide what you're not going to do." [Tr. 3170] After that first day, Mr. Whiteley then worked with Assistant Superintendent Diane George to develop the district's improvement plan – Mr. Slats evidently did not participate. [Tr. 3171]

298. Mr. Whiteley's role at Yupiit did not include a review of the district's finances. Mr. Whiteley testified that the educators in Yupiit did not raise the issue

of money or the need for more resources with him at all during the time he spent in the district facilitating the development of the district's improvement plan. [Tr. 3178]

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299. At trial, when asked whether more money would help Yupiit, Mr. Whiteley testified:

I think money can always help, but I think in Yupiit's situation I think more money might exacerbate until they got focused. I think they might develop and acquire things that still might lead to incoherence. So I think until they take some measures to really figure out what they're going to do, how they're going to do it and how they plan to measure it, I would be concerned, that I don't believe money would fix the issue as it stands.

[Tr. 3172]

300. Stacy McKeown from EED also went to Yupiit at that time. She described her purpose as "just [to] get everyone in alignment between their schools and with the district, and to get them to start thinking about what data they needed to collect in order to guide their instruction ... So that's basically what we spent the majority of our time out there doing, was just talking about how you use data to drive your instruction." [McKeown Depo. at 85-86]

301. Based on her involvement with the Yupiit School District, Ms. McKeown summarized her understanding of Yupiit's curriculum as follows:

Yupiit doesn't have an adopted curriculum ... because the curriculum that they use, it's called Guided Reading. That's what they use out in Yupiit, and it is sort of a teacher-directed methodology. ... And so with Guided Reading, when you have really at-risk kids, it doesn't quite meet their needs all the time, because it's not quite systematic and explicit enough for students who are really struggling. ... Like, for instance, in Guided Reading, if you are working with a struggling reader, you sort of – the teacher leaves it up to the kid to kind of figure out – let's say they come across an unknown word. And they might say something

like, "Well can you look at the picture, or can you think of what the word might be" ... Whereas, with struggling readers, as I mentioned earlier, you need to be very systematic and explicit. And you need to say, "That word is garage. What is the word garage? Okay. Go back to the beginning of the sentence and read the whole sentence again. So because Guided Reading doesn't necessarily address all the needs of those more struggling readers, we suggested some supplemental and intervention programs. We actually bought them some supplemental and intervention programs.

[McKeown Depo. at 92]

302. The District Improvement Plan was completed with the EED's assistance on November 1, 2005. Review of that plan demonstrates that at least as of that time, Yupiit did not have a reading curriculum in place in its classrooms, or at least a reading curriculum that is "grounded in scientifically-based research." 4 AAC 06.840(k)(1)(A). The district's improvement plan that was drafted with EED's assistance simply recognizes that "[t]he National Reading Panel endorses implementation of a comprehensive and balanced literary program for student K-6." The plan then states "[t]he district is developing a program." [Ex. 2423 at 58652] <sup>17</sup>

303. In FY 2005, the Yupiit School District received approximately \$3,612,480 to educate the children at Tuluksak (160 students x \$22,578). At about that time, 15% of the children at that school were proficient in language arts, and 21% were proficient in math. [Ex. 155] Tuluksak's school improvement plan, drafted with EED's assistance, budgeted approximately \$16,000 – less than ½ of one percent of those revenues – toward improving their children's proficiency in language arts and math. The plan included \$7,500 for textbook

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<sup>17</sup> One example of a detailed District Improvement Plan with concrete steps for improvement is from Bering Strait at Exhibit 2432.  
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replacement, \$3,500 for a consultant, and \$3,500 for 2 teachers to attend an unspecified national conference. [Ex. 2395 at 36028]

304. The improvement plans also required that the three school sites conduct weekly meetings and submit the logs of those meetings to the department. The schools were advised on the use of formative assessments, use of constant monitoring of student progress, and adapting instruction to conform to what is working in the classroom. The weekly meetings were for teachers to discuss the results of these new practices. [McKeown Depo. at 82-95; Tr. 3167-68, 3171-72]

305. Mr. Slats was not supportive of the weekly meetings of teachers and staff that the State required in early 2006. He stated, "I have concerns about that it is taking away from the freedom of the teachers to teach a course. ~~Basically, you're taking the freedom of the teachers and restricting them to the~~ data." [Slats Depo. at 116]

306. Ms. Reilly testified that the State's intervention was quite helpful in two of the three schools within the district. In her view, "there's the need to hold [the district] accountable or ... you need to meet this benchmark. There are some very good teachers out there who really want the best for their kids." [Tr. 3563-64]

307. EED has continued to monitor the Yupiit School District from Juneau. [Tr. 2401] EED sent additional personnel to Yupiit for four days in January 2006 to instruct teachers and principals how to obtain data from student testing to assist in developing instruction. [McKeown Depo. at 91-92] In addition,

EED has done approximately three audio conferences with all three sites since November 2005.

308. Ms. McKeown also indicates that she has been having bi-weekly contact with the literacy leader at the Akiak school in Yupiit, "talking to her about reading and literacy in her school, and what are some things she can do to improve." [McKeown Depo. at 94]

309. In the fall of 2006, EED conducted an instructional audit process at Yupiit, which is a detailed on-site review of the school district's educational processes. [Tr. 2402, 2883-92]

310. When asked what measures could be taken for the Yupiit school district, Mr. Whiteley indicated there needed to be effort both in what he termed the district's "internal capacity" and also external measures. [Tr. 3176] When asked to identify what external measures were appropriate, he indicated, "withholding funds, asking for an improvement plan, going and visiting, having curriculum teams maybe support" the district. [Tr. 3176] He acknowledged that there are two components to effective educational finance: in addition to adequate resources, there has to be adequate oversight and accountability to make sure that a district is working effectively. [Tr. 3181] Mr. Whiteley testified that he was unaware of any oversight of the district's fiscal decisions, other than auditing requirements. [Tr. 3203-04] But in his view, "what's more important would be curriculum and program oversight than actually the finances." [Tr. 3204]

311. With respect to EED's visit to Yupiit in the fall of 2005, Superintendent Slats testified that he believed that it improved proficiency scores

in English reading and writing, and math. But in his view that is not demonstrative of a "better education." [Slats Depo. at 155] Instead, he testified, "when our students are not going to be afforded the opportunity to learn more about their language and culture and when our students are being encouraged to lose their language, when our students are going to be missing out on what they could learn about their language and culture ... It's the whole idea behind the No Child Left Behind Act. ... What it's doing is that it's taking away our opportunity to teach the immersion program and the other Yup'ik language and culture focus." [Slats Depo. at 155-56]

312. The Plaintiffs have failed to establish by a preponderance of the evidence that the additional services that Yupiit seeks to provide to its students could not be provided to those students through redirection of the funds that are currently provided to the district. Although the district's audited financial statements for several years were submitted as exhibits to this Court, the Plaintiffs did not present a budget analysis to demonstrate the lack of available funds for the additional services sought.

313. School officials indicated they would use extra money to hire more vocational, art, and music teachers. But it is not vocational, art, or music teachers of which Yupiit students are in desperate need at this time. Rather, this Court finds by a preponderance of the evidence that it is a structured basic curriculum that is lacking in this district that would accord to these students the opportunity to learn how to read and write in English and understand basic math. Although several witnesses testified as to the many dedicated and well-

intentioned teachers at Yupiit, and this Court has found by a preponderance of the evidence that the district is provided with sufficient resources to meet these basic educational needs, the majority of the children at Yupiit are not being provided with the opportunity to acquire the basic tools they need to succeed in both traditional and global societies.

#### ***IV. Facts about Several Non-Plaintiff School Districts***

##### ***A. Fairbanks North Star Borough School District***

314. Fairbanks North Star Borough (FNSB) has approximately 14,600 students and 34 school sites including four high schools, four middle schools, one junior-senior high, 19 elementary schools, and three charter schools. Of the total student population, 35% is eligible for Title 1 federal funding, 11% is limited English proficient, and there are approximately 50 different language backgrounds. [Tr. 3434-35] FNSB's largest school has 1,302 students and its smallest has 98. [Tr. 3434-36] Ninety-three percent of the teachers are highly qualified under NCLB. The total revenues from all sources received by the district on a per student basis are \$9,769 per year. [Tr. 3436]

315. FNSB offers a large variety of classes, included advanced placement classes. The district also offers fine arts courses, including music and art. When a school is too small for a single fine arts teacher, the district has worked to develop shared programs such as "art liaisons." These are non-art teachers teaching art to students by presenting art lessons prepared by certified art teachers. [Tr. 3438-39] FNSB offers elements of geometry every year to

students beginning in kindergarten and running through twelfth grade. [Tr. 3440-48] In addition to the core subjects, the district also offers vocational education courses and specialized reading courses. [Tr. 3448-50]

316. Dr. Ann Shortt was called as a witness by the State to testify in this case. Dr. Shortt has been the superintendent of FNSB for five years. Prior to that she had been the assistant superintendent for three years. [Tr. 3430-32]

317. Dr. Shortt testified that there is no way that all of the students in the FNSB will be proficient by 2014, and that more money would not change her view. [Tr. 3455-56]

318. FNSB's pupil-teacher ratio is considerably higher than the Plaintiff school districts, averaging between 23 and 26 students for each teacher. Dr. Shortt testified that this was an intentional decision made by the local school board, because the higher ratio has allowed the district to offer more programs than they otherwise would have been able to offer to its students. [Tr. 3458-59]

319. Dr. Shortt believes that local control is extremely important. She believes it allows a district to offer the types of programs and services best suited for its students. [Tr. 3471-72]

320. FNSB did not make AYP because of certain subgroups scores, including limited English proficient students and students with disabilities. Alaska Native and American Indian students in this district did make AYP in 2005-06 in both language arts and math. The district as a whole scored 82% proficient in language arts and 70% in math. Alaska Native students scored 69% and 56% in those areas, respectively. [Ex. 149] FNSB has closed the achievement gap

between Alaska Native American female elementary students and Caucasian students. [Tr. 3450-51]

321. A preponderance of the evidence at trial demonstrated that the students within FNSB are being accorded a meaningful opportunity to achieve proficiency in reading, writing, math and science, and are also accorded the opportunity for meaningful exposure to all of the State's other content standards.

***B. Unalaska School District***

322. Unalaska is located 900 miles out on the Aleutian chain. The Unalaska School District has two schools: one with approximately 150 students in kindergarten through fourth grade and one with approximately 250 students from fifth through twelfth grade. It also offers a locally-funded pre-K program of about 50 to 60 children, and provides scholarships to low income children for that program.

323. The district is similar in size to both the Kuspuk and Yupiit School Districts, with about 400 students. However, unlike those two Plaintiff districts, Unalaska's two school sites are in the same community.

324. Total funding per pupil for Unalaska was approximately \$13,000 in 2005. This includes local, state and federal contributions. [Tr. 3487]

325. The district has a total of 31 teachers for its approximate 400 students from K through 12, which results in a pupil/teacher ratio of about 13 to 1. [Tr. 3488-91] In addition, there are approximately 10 classroom aides. [id.]

326. The district has set up a dual credit program with the University of Alaska to enable students to obtain college credit while in high school. It also

offers all core subjects, including biology, chemistry, physics, statistics, geometry, trigonometry, and calculus. Unalaska also has a band and offers several art classes. [Tr. 3490-97; Ex. 2021]

327. The School District's superintendent, Darrell Sanborn, was called as a witness for the State in this case. Mr. Sanborn has been the superintendent of the Unalaska City Schools for seven years and was recognized in 2006 as the Superintendent of the Year. [Tr. 3480-82]

328. Mr. Sanborn personally counsels any sophomore who does not pass the high school graduate exam during that year, and formulates each such student's plan of study so as to maximize that student's chance of success on the exam. Last year, 100% of his senior students graduated. He also makes lists of every student in the district who has tested below proficient and reviews that information with the child's teacher so as to best structure a plan for each child that is designed to achieve proficiency. [Tr. 3505]

329. Unalaska made AYP in 2006. For the district as a whole, 88% of the students were proficient in language arts and 78% were proficient in math. [Ex. 149]

330. Mr. Sanborn testified that the education offered to children by the Unalaska School District is adequate – indeed, he indicated he was very proud of the education offered in the district.

331. A preponderance of the evidence at trial demonstrated that the students within the Unalaska School District are being accorded a meaningful opportunity to achieve proficiency in reading, writing, math and science, and are

also accorded the opportunity for meaningful exposure to all of the State's other content standards.

**C. Kodiak Island Borough School District**

332. The Kodiak Island Borough School District (KIBSD) has up to 15 schools in nine communities. There are six schools in Kodiak. Some of the small communities' school populations, particularly two logging camps, periodically fall below ten and then those schools are closed. [Tr. 3072-73] KIBSD serves approximately 2,679 students.

333. KIBSD receives revenue of approximately \$11,000 per student per year. [Tr. 3073] Of the communities outside Kodiak, all but one are accessible only by air or boat. [Tr. 3072]

334. Superintendent Betty Walters was called to testify for the State in this case. In her testimony, she explained how in the smaller schools within the district, a change in status of a single child can affect whether the school will meet AYP. For example, a high school student who decides to take a semester off may be counted as a drop out even though the student later returns to school. Nonetheless, some of Kodiak's village schools have consistently made AYP. [Tr. 3085]

335. KIBSD adapts the delivery of courses and experiences to its schools' circumstances. For example, some courses are delivered by correspondence or video-conferencing to remote areas and some by itinerant teachers. These course include world languages, sciences and the arts. [Tr. 3119-21]

336. KIBSD has found the State's education resources very helpful, including the mentoring program, special education monitoring and mediation, staff development, and curriculum review. [Tr. 3093-97]

337. KIBSD did not meet AYP in 2006, solely because of the low score of students with disabilities. [Ex. 149] For the district as a whole, 84% of the students were proficient in language arts and 70% were proficient in math. For Alaska Native students, the percentages were 73% in language arts and 57% in math. [id.]

338. Superintendent Walters testified that she believed the education offered to children in the Kodiak Island Borough School District was adequate.

339. A preponderance of the evidence at trial demonstrated that the students within the Kodiak Island Borough School District are being accorded a ~~meaningful opportunity to achieve proficiency in reading, writing, math and science, and the opportunity for meaningful exposure to all of the State's other content standards.~~

***D. Other Non-Plaintiff School Districts***

340. Some evidence about several other non-plaintiff districts is in the record, from which the Court makes the following findings:

***Chugach School District***

341. Chugach School District is a REAA located on Prince William Sound.

342. The current Commissioner of Education, Roger Sampson, was the superintendent of Chugach School District in the 1990's. While there, he

successfully implemented a standards-based approach to education that has since been adopted in other districts. This approach was referred to during the case as the "Chugach model" or "standards-based model." [Tr. 2336]

343. While at Chugach, Commissioner Sampson was very successful in improving student achievement for Chugach – its test scores rose significantly. [Tr. 2343] In 2001, Chugach received the Malcolm Baldrige Quality Award for its achievements. [Tr. 2346]

344. Chugach is a relatively small school district. It has appeared on some charts introduced in evidence in this case as one of the highest funded districts in the State. [Ex. 43 at 3] This is because Chugach receives many grants for which it is a conduit – the grants are distributed to other districts. [Tr. 2344]

***Lower Yukon School District***

345. The Lower Yukon School District is one of the six districts in the state at Level 4, year 2 under the State's AYP accountability system. As a result of this status, EED sent a team to this district in the fall of 2006 to perform an instructional audit. [Tr. 2892]

***Annette Island School District***

346. The Annette Island School District is located in Metlakatla in Southeast Alaska. The population is almost 100% Alaska Native. [Tr. 2322-23] In the late 1970's, the children in the Annette Island School District were generally performing in approximately the 30<sup>th</sup> to 40<sup>th</sup> percentile on nationally-normed assessments. [Tr. 2326] In 2006, Annette Island made AYP. In the

district as a whole, 74% of the students were proficient in language arts and 65% were proficient in math. For Alaska Natives, the scores were slightly higher – 75% proficient in language arts and 66% in math. [Ex. 149]

#### **V. Plaintiffs' Experts**

347. The Plaintiffs presented the testimony of several experts and submitted the reports that they had prepared, as to which the Court makes the following findings:

##### **A. Mueller and M. Smith's Curriculum Audit**

348. Van Mueller, Ph.D. and MaryJo Smith, Ph.D. presented to the Court what they termed a "curriculum audit."

349. Dr. Mueller has a doctorate in Education Administration, and was a professor in Educational Policy and Administration at the University of Minnesota until receiving emeritus status there in 1997. [Ex. 3 at 839-840]

350. Dr. Smith has a doctorate in Philosophy in Educational Psychology – Psychological Foundations, with an emphasis in Statistics, Measurement and Evaluation. [Ex. 3 at 866-871]

351. To prepare the curriculum audit, Drs. Mueller and Smith surveyed 28 school districts in Alaska about their curricula. They also surveyed 26 districts regarding projected expenses; the result of those surveys was called a "costing-out" survey. [Ex. 3 at 714; Tr. 1121, 1123]

352. The curriculum audit was intended to allow "the authors to assess the breadth and depth of the curriculum offered at the building level" in Alaska's schools. [Ex. 3 at 367]

353. The testimony at trial regarding the curriculum audit revealed numerous deficiencies in the research methodology that was used. Among these deficiencies were the following:

354. The assessment of the secondary curriculum was based solely on "courses available." [Ex. 3 at 762] For example, specific math courses such as geometry and trigonometry were each listed on the survey form, and the respondent was instructed to indicate if that specific course was taught. However, many districts that submitted responses do not have specific "courses" with labels such as "geometry," but instead provide curriculum in "levels," such as ~~English 1 or Math 4.~~ Some districts in Alaska follow what is sometimes referred to as the "Chugach model," in which subjects are not taught according to a student's age or grade level, but rather according to the student's skill or proficiency. Drs. Mueller and Smith were not aware of this, and the survey was not designed to include this aspect of education in Alaska. [Tr. 868, 1323-26] Thus, when the survey indicates that a certain percent of the secondary schools do not teach geometry, it means only that those schools do not have a course labeled "geometry." [Tr. 973-74] No effort was made to determine the schools that actually taught geometry concepts to students. [Tr. 732-33] Dr. Mueller testified: "We could've ... listed a whole group of mathematical principles and simply asked people to tell us where they taught them, but that was a different

study for a different purpose, and it did not meet our needs. It is possible to determine that, but that wasn't part of what ... we were attempting to accomplish." [Tr. 974]

355. The survey did not attempt to determine if there were students at a school who were ready for and interested in a class that was identified as not being taught. For example, the study indicates that "calculus was not taught in 78% of the secondary schools." [Ex. 3 at 739 (emphasis in original)] But there was evidently no effort made to determine whether there were any students at these schools that sought to take calculus but could not do so because it was not available for them. This is particularly problematic given that 25% of the responding schools had fewer than 20 students, and at least one junior high school was included within the secondary schools. [Tr. 1181, 1417; Ex. 2441]

356. The survey asked school districts to identify students who were enrolled in correspondence courses through Alyeska Central Schools or enrolled in the Cyber Schools. [Ex. 3 at 766] It did not ask about the other forms of distance learning available in the state. Dr. Mueller testified that they were not fully aware of the other available correspondence and distance learning options. [Tr. 883] The survey also did not address other alternative delivery methods such as itinerant teachers or short term intensive learning experiences. [Tr. 1243]

357. At the elementary level, the survey respondents were asked to identify "curricular areas" that were taught. Ninety-three percent of the respondents indicated that they taught reading. When asked whether the other 7% of schools were teaching reading, Dr. Mueller responded, "we don't speak to

the other 7%. This statement stands on its own." [Tr. 885] As Dr. Mueller acknowledged, the only way to really determine what was being taught would be to look at "the course outlines, the detailed subjects, the materials being used" -- an approach that was not done in this survey. [Tr. 893]

358. The "costing-out" study looked at the staffing requirements necessary for providing a diverse curriculum using a conventional delivery system model -- "where we have teachers in front of students in classrooms." [Tr. 941]

359. Although the costing-out study used a conventional delivery system model, Dr. Mueller testified, "We don't think the conventional model of delivering schooling is at all appropriate for ... many of the smaller districts in Alaska." [Tr. 949]

~~360. Dr. Mueller acknowledged that using Mueller and Smith's costing-out model for the Skagway school would result in over 50 teachers being necessary for only 110 students. [Tr. 930-41] Yet, Skagway was determined by the Plaintiffs to be among the most successful schools in the state with its existing number of teachers. [Ex. 14; Tr. 943]~~

361. A substantial majority of the districts that Drs. Mueller and Smith selected for inclusion in the survey were members of Plaintiff CEAAC. Dr. Mueller testified this was intended "to show that there were disproportionate numbers of inequities in student outcomes and opportunities to learn in those CEAAC districts." [Tr. 768-70, 975]

362. Superintendents chose which schools to include in the survey. The intent of Drs. Mueller and Smith was that superintendents would pick one high performing and one low performing school. However, apart from their selection of schools in Anchorage, they made no attempt to determine whether the schools chosen had been accurately selected or whether they were representative of Alaska schools in general. [Tr. 781-82] Except for about four superintendents who met directly with Dr. Smith, representatives of Plaintiffs NEA-Alaska and CEAAC contacted the districts and provided them with the surveys and instructions on how to fill out the survey. [Tr. 794, 842] The survey contained few directions and key terms were not defined. [Tr. 843-44] According to Dr. Mueller, respondents "freelanced the directions." [Tr. 814]

363. District responses to the survey were inconsistent. For example, ~~two districts submitted a combined response for all their schools -- 9 schools in one instance and 14 in the other.~~ [Tr. 809-10 (Southeast Island District-9 schools), 814-16 (Lake Peninsula District-14 schools)] There were at least three different versions of the survey. [Tr. 856-61] But Drs. Mueller and Smith did not attempt to standardize the responses.

364. There was no attempt made to determine the course content when a respondent listed a course as "other English" or "other Math." Instead, the survey results only report whether a class with a given label was offered. [Tr. 1265-78, 1306-08, 1325] Moreover, although Drs. Mueller and Smith were aware that a common practice in rural secondary schools is to rotate the class

offerings each year, they do not explain this practice in their report, and were inconsistent in how they reported it. [Tr. 1195, 1295-1301]

365. The tabulation of the results of the survey in both the initial report and at trial was inconsistent when the respondents had filled in "N/A" or left an answer blank. [Tr. 1270-77, 1309-12, 1385]<sup>18</sup>

366. Whether some schools do not offer geometry was an important evidentiary point in this case. Drs. Mueller and Smith's expert report claimed that 24% of the secondary schools in their study did not teach geometry. On cross-examination, however, Dr. Smith admitted that the surveys indicated that only 3 schools out of 49 reported that they did not teach geometry. [Tr. 1384-85] Those 3 schools were each very small -- with 9, 19, and 12 secondary students. [Tr. 1378-82] And there was no effort made to discern the readiness of children at these schools for geometry or any review of the actual math curricular offerings at these schools.

367. This Court specifically finds that Plaintiffs have failed to prove by a preponderance of the evidence the allegation in Paragraph 54(d) of the Second Amended Complaint that "26% of secondary schools did not offer courses in geometry." Moreover, this allegation has also not been proven even if amended as suggested by the Plaintiffs to mean 26% of a representative survey of secondary schools.

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<sup>18</sup> Dr. M. Smith testified that she should have had a separate scoring for responses marked "N/A," rather than treating them inconsistently. [Tr. 1311] Dr. Mueller was emphatic that: "N/A" meant "no," despite written instructions on the audit form asking only about courses that were "applicable" to the school. [Tr. 910-18]

368. In the course of her testimony at trial, Dr. Smith admitted that there were inconsistencies in how she had reported the data in the report. On re-direct examination, Dr. Smith testified that the percentage of courses "not taught" as reported in the curriculum audit had an expected error rate of plus or minus 20%, which was designed to account for any inconsistency. [Tr. 1385, 1424-26]

369. Based on all the evidence presented to this Court at trial, this Court finds that simply counting up the courses that are offered at one particular time from a specific list of courses that has been prepared by the surveyor is an inappropriate and inaccurate method by which to assess the educational opportunities available to children, and particularly those children that attend very small schools.

370. For all these reasons, the Court does not accord any weight to the curriculum audit, the costing-out study, or the conclusions drawn from those studies. [Ex. 3, Appendices C, E and applicable portions of the Executive Summary at 363-383] Moreover, although the underlying curriculum audit responses are part of the record, when these surveys are viewed separately from the expert report, they are hearsay, and will not be relied upon to support a finding of fact. [Exs. 2030 – 2100] In light of this finding, the State's motion to strike these portions of the experts' report pursuant to the Daubert/Coon standard is moot.

**B. Linda Darling-Hammond**

371. Dr. Darling-Hammond is a highly respected educator at Stanford University in the areas of teacher education, school reform, research methods, and curriculum. [Darling-Hammond Depo. at 6]

372. Dr. Darling Hammond reviewed Alaska's content standards and concluded that they are "appropriate in their breadth and depth." [Ex. 221 at 2] Likewise, she concluded that Alaska's performance standards "are appropriate definitions of what students should learn at each grade level in reading, writing, mathematics and science to master the Alaska standards." [Id. at 3]

373. Dr. Darling-Hammond testified that schools in Alaska are not meeting the State's content and performance standards because they are not teaching certain curricula (and therefore by implication school children in Alaska do not have the opportunity to meet those standards). Yet Dr. Darling-Hammond was careful to point out that her opinion was based on the "curriculum audit" by Mueller and Smith. [Darling-Hammond Depo. at 54-56, 107-09] Because this Court has accorded no weight to the results reported in the Mueller and Smith curriculum audit, it accords little weight to Dr. Darling-Hammond's opinions to the extent those opinions are based on that audit.

374. Dr. Darling-Hammond also testified that schools in Alaska are not meeting the State's content and performance standards because of a perceived lack of trained librarians at each school. Again, because Dr. Darling-Hammond stated that her opinion was based on the curriculum audit, her opinion can be accorded little weight. [Darling-Hammond Depo. at 57] As noted elsewhere in

these findings, other evidence presented to this court indicates that EED has provided library support to schools without librarians. And, while school librarians may be quite helpful in a school,<sup>19</sup> the Plaintiffs have not established by a preponderance of the evidence that a school librarian at every school site is of such critical importance to the maintenance of a school so as to be mandated by the Education Clause of the Alaska State Constitution.

375. Dr. Darling-Hammond's report also addresses teacher salaries, specifically in REAAs. However, this court found more persuasive on this issue the testimony of the personnel from the Plaintiff school districts, who consistently testified they believed their current salaries to teachers were quite competitive, and expressed a desire to hire *additional* staff at current salary levels, rather than increasing the salaries of existing staff.

376. Dr. Darling-Hammond persuasively testified that teacher quality impacts student performance, and "that that effect is actually typically stronger for the students with the greatest number of educational needs." [Darling-Hammond Depo. at 65]

### ***C. Mueller and Smith's School Site Survey***

377. Dr. Mueller and Dr. Smith also prepared a report regarding their school site visits in 2005. [Ex. 6] This report appears to simply restate the comments from interviewees. For example, the report states that "[t]he school has a difficult time bringing teachers into the village because the village housing is substandard and very expensive." [Ex. 6 at A-6] The basis for this apparent allegation of fact or expert opinion, however, was not actual investigation by an

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<sup>19</sup> See Ex. 356.

expert, but rather an unconfirmed and casual comment made by an unknown teacher. [Tr. 1395] This court was presented with substantial direct evidence about each of the Plaintiff school districts from such sources as school staff, EED personnel, school district documentation, and EED data and other records. The court finds the information from those direct sources to be considerably more reliable, particularly as the court had the benefit to consider any cross-examination presented with respect to that evidence. Moreover, the concerns that this court identified with respect to the curriculum audit prepared by Drs. Mueller and Smith create a considerable degree of skepticism by this Court with respect to these experts' work in other areas. Accordingly, the Court has accorded no weight to Drs. Smith and Mueller's Site Visit Report.

***D. Mueller's Paired District Study***

~~378. Over the State's objection at trial, the Court admitted a pre-litigation study conducted by Dr. Mueller and a colleague who did not testify. [Ex. 1] Very little testimony was received on this study, and it does not appear that it was relied upon in any significant way by Dr. Mueller or Dr. Smith in reaching their conclusions in this case.~~

379. The information the districts reported on in the study is from 1997 or earlier, and is therefore of marginal relevance to this case, which is assessing the constitutionality of the education provided at this time. [Ex. 1]

380. The pairs of schools that are compared in the study are dissimilar. For example, two large high schools in Fairbanks North Star Borough School District are compared with a small 7-12 school in Southwest Region REAA but

the schools are very different in demographics, size, location and other variables. [Ex. 1 at 16213].

381. The purpose of the paired district study was a litigation feasibility study for Plaintiff CEAAC. [Tr. 685]

382. While most components of the paired-study were not helpful to the issues before the court at this time, and were not relied upon by this Court in making its findings and conclusions, the report does contain a discussion on curriculum standards that this Court found to warrant consideration in the context of this litigation:

The state has a responsibility to guarantee each student access to a commonly-offered instructional program. Local districts should have responsibility for deciding what to offer *beyond* the state's requirements, but the state must provide an adequate instructional program to all students ...

Thus, state-directed inputs (a common curriculum) and assessment of outputs are required to insure that each student achieves at the minimum acceptable level.

[Ex. 1 at 16136-37, (emphasis in original)]

***E. Richard Salmon's Analysis of Alaska's School Finance***

383. Dr. Richard Salmon also testified on behalf of the Plaintiffs in this litigation. Dr. Salmon is a professor in the Department of Educational Leadership and Policy Studies at the Virginia Polytechnic Institute and State University. He has a doctorate degree in Educational Administration, and has been active as a consultant in school funding issues throughout the nation. [Ex. 3 at 844-847; Tr. 1621]

384. Dr. Salmon, together with Nat Cole, prepared a feasibility study on the potential for school funding litigation in Alaska that was admitted into evidence. In that review of Alaska's school finance system he concluded, "unfortunately, per pupil ... expenditures are higher among those districts with high percentages of Alaskan Native children. This is the fundamental challenge that this case will present to the Plaintiffs' attorneys and experts." [Ex. 2 at 16485]

385. Consistent with that fiscal reality, Dr. Salmon acknowledged that in Alaska, "The kids that are the poorest receive the most money on a per pupil basis." [Tr. 1717] The question Dr. Salmon's report poses is "whether Alaska has sufficiently recognized the variance in educational needs of pupils who attend its public schools?" [Ex. 3 at 452 (emphasis in original)]

~~386. Dr. Salmon was forthright in his testimony to this Court when he~~ acknowledged that in his view, there are no states that adequately fund education for poor children. [Tr. 1712]

387. Dr. Salmon's report is comprised of six chapters. [Ex. 3, Appendix B] The first four chapters present a comparative analysis of Alaska's school districts, focusing largely on funding and to a lesser extent on demographic differences among districts. Chapter V of his report is an adequacy study, and Chapter VI presents what he terms "Fiscal Equity and Wealth Relationship Statistics." [Ex. 3 at 443]

388. The information presented in Chapters I-IV is grouped by differences among school district type. The report and testimony examine the

statistics in three different ways: by Average Daily Membership ("ADM"), by "adjusted ADM," and by "weighted adjusted ADM."

389. Average Daily Membership is a statutory term which means "the aggregate number of full-time equivalent students enrolled in a school district" during a designated student count period. AS 14.17.990.

390. "Adjusted ADM" is the ADM adjusted for local contribution and multiplied by the factors that the State uses to allocate education funding to school districts under AS 14.17: school size factor, district cost factor, special needs factor, correspondence students, and intensive students.<sup>20</sup> See AS 14.17.410(b)(1). Dividing total state and local funding by adjusted ADM essentially reverse engineers the State's allocation formula.

391. "Weighted adjusted ADM" is not a term used or defined under Alaska law. Under this approach, Dr. Salmon added an additional weight for at-risk children. [Tr. 1652] "Weighted adjusted ADM" per Dr. Salmon adds one child to the adjusted ADM for every child in a school district who is eligible for free and reduced lunch. [Tr. 1652-54, 1733] It is Dr. Salmon's term, although he did not conduct any research into how much it costs to educate an at-risk child. [Tr. 1733] He did note, however, that "[m]any states across the United States now and particularly since the passage of No Child Left Behind are weighting youngsters or adding additional money in one way or another for at-risk children." [Tr. 1652]

392. Dr. Salmon testified that Alaska's current system of educational financing discriminates against REAAs. [Tr. 1713] Yet Dr. Salmon's charts

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<sup>20</sup> See AS 14.17.410.

demonstrate that under the existing funding formula in Alaska, in FY 2002 REAAs received the most revenue per student from all sources when compared to boroughs and cities within the state when computed by ADM. [Ex. 3 at 500]

393. Dr. Salmon's analysis did not include Title 1 funds, but did include federal impact aid. The Title 1 monies would go to benefit the very groups that he claims are disadvantaged by the Alaska system, namely REAAs and poor children. [Tr. 1740-41] However, Dr. Salmon persuasively testified that it is inappropriate to consider federal Title 1 funds when comparing relative funding among school districts. [Ex. 3 at 696]

394. When Adjusted ADM is considered, then medium and small boroughs and cities received considerably more revenue than REAAs per Adjusted ADM in FY 2002 (\$5,887 versus \$5,052). Large boroughs and cities ~~received about the same as the REAAs per Adjusted ADM (\$5,040).~~ [Ex. 3 at 503] But the State persuasively demonstrated that calculating revenue per student based on adjusted ADM is effectively undoing the funding formula established by the State, and is an inappropriate means of assessing the amount of revenue per student. [Tr. 1740-49]

395. Using Dr. Salmon's weighted adjusted ADM analysis, in FY 2002 REAAs received the least money (the least money, that is, per "adjusted weighted students," which is not the same as actual students). [Ex. 3 at 505] Using his adjustments, medium and small boroughs and cities were computed at \$5,003; large boroughs and cities at \$4,235 and REAAs at \$3,994.

396. Alaska's funding system does not include an adjustment for at-risk children. Many witnesses, including the State's witnesses, agreed with the concept that it costs more to educate "at-risk" students.<sup>21</sup> Nonetheless, Dr. Salmon's assumption that all "at-risk" children cost *twice* as much to educate as all other children was arbitrary, and not supported by his own research or any research presented to this Court at trial. He admits that he does not know what the proper weighting should be, and that there is no consensus on this issue among experts. [Tr. 1733-34]

397. Dr. Salmon's report includes statistics on the following aspects of school districts: number of accredited schools, percentage of students receiving special education services, percentage of students classified as having migrant parents, dropout rates, graduation rates, attendance rate, retention rate, percent ~~minority students, percent students eligible for free and reduced-price lunches,~~ student test scores, and percent of students who passed the high school exit exam. [Ex. 3 at 592-626] These statistics demonstrate that REAAs have the lowest high school graduation rate, the lowest attendance rate, the highest dropout rate, the highest percent of poor students and the lowest test scores when compared to school districts in boroughs and cities. [Ex. 3 at 626]

398. In Chapter IV of his report, Dr. Salmon introduces the concept of "high-wealth boroughs and cities" and "low-wealth boroughs and cities." Using what he described as a "Synthetic Assessed Valuation Per Weighted Adjusted Average Daily Membership," he classified Bristol Bay, North Slope, Skagway, Unalaska, and Valdez as high wealth, and Craig, Hoonah, Hydaburg, Lake and

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<sup>21</sup> See, e.g., testimony of Dr. James Smith at Tr. 2780, 2725-26.  
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Peninsula, Northwest Arctic, St. Mary's, Tanana and Yakutat as low wealth. [Ex. 3 at 711] This chapter was added to his report at the request of one or more directors of CEAAC. [Tr. 1708-10] CEAAC had suggested that Dr. Salmon pursue the idea that REAAs were discriminated against. [Tr. 1710] But Dr. Salmon concluded, after applying his adjustments and weights, that high-wealth districts have the largest local revenue contributions and receive the least state revenue. [Ex. 3 at 632, 634] This is consistent with an equalized system.

399. Chapters I through III of Dr. Salmon's report support a conclusion that the average REAA receives more funding from the State than the average city and borough school district. It also demonstrates that the average REAA has more challenges within its student population than the average city or borough school district. [Exs. 2321, 2367, 2368, Ex. 3 at 450-626]

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*F. Salmon and Driscoll's Educational Econometric Assessment*

400. In Chapter V of his report, Dr. Salmon teamed with Plaintiffs' expert Dr. Lisa Driscoll to perform what they called an "Educational Econometric Assessment" to ascertain a baseline revenue requirement to fund education in Alaska. [Ex. 3 at 685]

401. This study originated from an analysis that ranked school districts in the state from most successful to least successful. That type of analysis was originally not intended to be used for any purpose other than to identify a set of schools to visit or to study. But evidently Plaintiff CEAAC asked Dr. Salmon to use the data to "put some sort of price figure on what it cost to provide educational services that were judged to be comparable to what the so-called

successful school districts were providing in Alaska and assuming that the so-called successful schools were according to Alaska's definition of adequate." [Tr. 1701] The basic premise behind a successful district study is that once the cost of an adequate education in a successful district is known, that cost can be used to estimate the cost for an adequate education in all districts of the state. [Tr. 1762]

402. Dr. Salmon referred all questions about this chapter to Dr. Driscoll, who also testified at trial. Dr. Driscoll is an Assistant Professor of Educational Leadership at Virginia Polytechnic Institute and State University, with a doctorate in Educational Administration. [Ex. 3 at 874]

403. In attempting to define a successful district, Drs. Salmon and Driscoll analyzed variables from a spreadsheet provided to them by Dr. Cole. [Tr. 1689] ~~After running two regressions, they determined that the following~~ variables should define a "successful district": grade six reading score; percent free and reduced price lunch; percent minority; dropout rate; and FY 2001 State and Local Revenues Per ADM. [Ex. 3 at 686-88] Although the report describes several other variables that could have been used in a successful district study – such as pupil/teacher ratios or teacher salaries – those other variables were not used. [Ex. 3 at 685; Tr. 1892-96] Dr. Salmon testified that "we selected a district that we consider virtually perfect." [Tr. 1764]

404. The inclusion of "percent minority" as a definition of success in the successful district study - in which the optimal district is defined as one that has no minority students - makes this study race-based and inappropriate for this

Court to rely upon. Interestingly, each expert said the other expert was ultimately responsible for the selection of the variables used. [Tr. 1766-77, 1851-52]

405. Moreover, it is illogical to include minority status or poverty as factors that define a "successful" district. Having a high percentage of minority students or a poor student population does not make a district unsuccessful. Indeed, the data that Salmon and Driscoll used to rank districts indicate that districts with high minority populations and a high percentage of poor students - like Annette Island - can be very successful. [Ex. 2443; Tr. 1899-1907]

406. The results of the study clearly show the effect of including race and poverty in the definition of "successful." [Ex. 14] Districts such as Yakutat and Annette Island -- which have high test scores and low dropout rates, and also high percentages of minority and poor students -- rank far below districts with considerably lower test scores that also have a smaller percentage of minority and poor students.

407. It is also illogical to include revenue as a factor that defines the optimal district. The report states, "that this model is based on the premise that the successful school districts are those districts that are deemed successful by common criteria and are not necessarily those districts that are high spending districts." [Ex. 3 at 688]

408. The report used the "successful schools" analysis to make an estimate of the total amount of money that would be needed to fund an adequate education. The estimate for FY 2001 was \$1.374 billion. [Ex. 3 at 689] At trial, Dr. Salmon admitted that this number was incorrect. [Tr. 1794-96] A rough

estimate performed at trial using Dr. Salmon's methodology indicated that state and local funding already exceeded the amount necessary for an adequate education under this analysis, and that when federal funding was included in the estimate, Alaska's total funding was far more than the minimum needed under Dr. Salmon's calculation. [Tr. 1816-21]

409. For the foregoing reasons, this Court has accorded no weight to Chapter V of the Salmon/Driscoll report. [Ex. 3 at 682-89, see also Tr. 2591]

***G. Salmon's and Driscoll's Equity Statistics***

410. The final chapter of Dr. Salmon's report was also co-authored with Dr. Driscoll, and is entitled "Fiscal Equity and Wealth Relationship Statistics, FYs 2001 and 2002." [Ex. 3 at 691]

411. Dr. Salmon presents several "equity statistics" in Chapter VI of his report. [Ex. 3 at 693] Among them is the federal range ratio, which is the federal law that determines whether Alaska is permitted to deduct impact aid. This test allows a disparity of 25% in funding amounts among school districts within a state. Dr. Salmon testified that this disparity test is a conservative test that only six or seven states could pass. Alaska passes this test. [Tr. 1647-48] He also testified that Alaska's score on the federal range ratio was quite good. [Tr. 1695]

412. The fact that the State passes the federal disparity test provides support for a finding that the State's system of funding education is equalized.

***H. Nat Cole's History of Education in the State of Alaska***

413. Nat Cole was the Deputy Commissioner of Education from 1974 through 1980. From 1983 to the present, he has worked as a consultant and

expert witness to school districts, educational organizations, and governments in the areas of school finance, school law and school litigation. He holds a doctorate in Educational Administration. [Ex. 3 at 835]

414. Dr. Cole's expert report is entitled "A History of Education in the State of Alaska." It covers the history of education in Alaska dating from the Russian Alaska days, through the Alaska territorial days, and continuing after statehood.

415. Dr. Cole indicates that "he developed the school foundation funding program that went into effect in fiscal year 1988." [Ex. 3 at 385-440] That program remained in effect until 1998 when the Legislature enacted the foundation formula that is currently in effect. Dr. Cole did not support the current funding formula, but acknowledged that it came about because of concerns that "some districts were over-funded and some were under-funded" under the 1988 funding program and "therefore we need a system to shift that money." [Tr. 2181-82]

416. In Dr. Cole's view, "[t]he two major lessons we should have learned since 1988 are (a) the State's failure to continue state support at a level to offset the increased cost of education, and (b) the failure of the State to adequately address the problem of students who are performing below proficient on tests devised to measure progress." [Ex. 3 at 427] Dr. Cole believes that the State should spend about twice as much as it currently does for education, and enact an income tax if necessary to that end. [Tr. 2193-94]

417. Dr. Cole ran an analysis that sought to determine the correlation between student test scores within a district and the amount of state and local funding the district received. His analysis showed that there is very little correlation between the amount of state and local dollars spent on education instruction and student test scores. [Ex. 3 at 434] From that analysis he concluded, “[i]t might imply that a little more money might help, but it doesn't necessarily imply that.” [Tr. 2108]

## **VI. Defendant's Experts**

### **A. James Smith, Ph.D. and Naomi Calvo**

418. Dr. Smith and Ms. Calvo together prepared an expert report intended to address four topics: (1) the relationship between funding and student achievement, ~~(2) the relationship between demographic factors and student achievement,~~ (3) the correlation between funding levels and achievement, percent poverty, percent minority, and drop-out rate, and (4) whether the lowest performing school districts receive the least educational resources. [Ex. 43 at 2]

419. At trial, Ms. Calvo testified first and was qualified as an expert in analytic methods in education finance, including statistics. [Tr. 2597]

420. With respect to the first and third topics, Ms. Calvo's analysis concluded that the highest spending schools in Alaska demonstrated the least proficiency in test scores. [Ex. 43 at 5] “The ten lowest performing districts received, on average, 77 percent *more* state operating funds per pupil than the ten highest performing districts.” [Ex. 43 at 15 (emphasis in original)] But when

the analysis is controlled for various demographic factors such as poverty, percent minority, and percent limited English proficient, then it is less of a negative relationship between funding and achievement. [Tr. 2637]

421. Based on that analysis, Ms. Calvo concluded that when considering student achievement in relationship to school district funding in Alaska, if extra money was added, "we would not expect to see a performance increase." [Tr. 2636] She opined that this may be because Alaska's spending on education has reached a level at which there would be diminishing marginal returns. [Tr. 2645] Ms. Calvo's analysis also demonstrated that "some [districts] are clearly doing a better job of educating students with access to the same level of resources than others are." [Tr. 2615]

422. With respect to the second topic, her analysis demonstrated the relationship between specified demographic factors and student achievement as follows:

- There is no statistical relationship between the size of the district and student test scores, when controlling for other demographic factors;
- On average, districts with higher percentages of Alaska Native students have lower test scores;
- Schools with higher percentages of economically disadvantaged students tend to have lower test scores;
- At the school level, the percentage of special education students corresponds with lower test scores.

- On average, districts with higher percentages of limited English proficient (LEP) students have lower test scores.

[Ex. 43 at 9-10]

423. On the fourth topic, based on her statistical analysis of data from the State Department of Education, Ms. Calvo concluded that education funding in Alaska "is being targeted to the lowest performing districts." [Tr. 2611]

424. Ms. Calvo's analysis is consistent with the other evidence at trial that Alaska is directing the most funding to those school districts that are the lowest performing on state assessments.

425. Dr. James Smith testified immediately after Ms. Calvo. Dr. Smith has a doctorate degree in Education Administration and was qualified as an expert in the areas of school finance, curriculum and instruction and education adequacy issues. [Tr. 2695] He has testified in a number of school funding lawsuits throughout the nation.

426. Dr. Smith presented an analysis of Ms. Calvo's statistics. Among his conclusions was his view that Alaska's schools tend to be inefficient. [Ex. 43 at 17-20] In this regard, he noted "it's well-documented that schools and other governmental agencies when they receive additional funds, tend to spend the money the same way that ... they were already spending it. They tended to spend more money on the same inputs. So, if there's a general increase in funding in a school district, the most likely outcome is that salaries will go up, and it's less likely that you'll see any activities that will change student behavior. ... I

tend to agree with Dr. Davis ... there are exceptions -- but schools tend to be run for the convenience of adults." [Tr. 2719-20]

427. Dr. Smith does not support targeted or categorical funding, such as Title 1 funding, that constrains the way that the money the school district gets can be spent. [Tr. 2721-22] In his opinion, it has two problems: "One, it constrains how those people who are closest to individual students can use the resources ... [T]hey get captured by bureaucrats who worry about the rules and not so much about the outcomes ... The second [problem] is that if you follow the rules and spend it the way the funder says, the way the state says or the federal government says, then you're relieved of accountability for the outcome because the answer is always, I spent it the way you told me." [Tr. 2722]

428. Instead of targeted funding, Dr. Smith "always recommend[s] ~~block grants to the maximum extent that it's possible.~~" [Tr. 2722-23] But, in his view, there is also a need for a "strong accountability system that goes with that so there are consequences for not producing the desired outcomes." [Tr. 2723]

429. Dr. Smith discussed what he termed the "progressive discipline" approach of No Child Left Behind, which Alaska has also adopted. In his view, when addressing low performing districts,

[T]he first step is [to] require a plan. ... If that doesn't work, then you provide assistance. First you offer assistance, then you provide assistance, and then ultimately the State, then, takes drastic measures such as replacing the superintendent, taking over the district. . .

I would just add that the last one, the taking over the school district and sending educators into school districts, does not have a happy track record around the country. When you take over a school district, it's much like taking over Iraq. People are not happy about

it in the community and the faculty that remains tends to try to reject the assistance. So it requires a great deal of diplomacy and a great deal of hand-holding and a capacity building at the local level.

[Tr. 2724-25]

430. Dr. Smith also testified: "Every school that I've seen that's a turn-around school, that's gone from low performance to high performance, has done it without additional money. I should be clear. Many of them have project grants and things like that, but essentially the way they've done it is to stop doing what they were doing, figure out what works and what doesn't work, quit doing those things that don't work, and start doing things that are likely to have a higher payoff." [Tr. 2739]

431. Dr. Smith acknowledged that he has been a strong proponent of pre-kindergarten programs in other school funding lawsuits in which he has been involved, and personally supports it. [Tr. 2822] But he questioned the wisdom of simply adding a pre-K program in a lower performing school district: "I don't think that [pre-K] would necessarily be successful in school districts that are struggling to educate kids k-12 to append another two grades onto it." [Tr. 2767]

***B. Michael Wolkoff***

432. Michael Wolkoff is an economics professor who holds a doctorate in Public Policy Studies. [Tr. 3216] He has testified in a number of educational finance cases throughout the nation. [Tr. 3217]

433. Dr. Wolkoff testified in this case with respect to three aspects of the teacher labor market: (1) teacher pay; (2) measurable characteristics of

teachers and mobility behavior, and (3) the extent to which teacher characteristics impact student test scores. [Tr. 3219]

434. With respect to teacher pay, Dr. Wolkoff concluded that in 2003-04, Alaska's average teacher pay was the 10<sup>th</sup> highest in the nation. [Tr. 3227] However, when that pay is adjusted for cost of living, its ranking drops to 41<sup>st</sup> (although Dr. Wolkoff expressed some concern regarding the accuracy of the CPI adjustment). [Tr. 3230] Dr. Wolkoff also compared teacher salaries in Alaska to other Alaskan salaries, and determined that Alaska teachers' pay is comparable to that of Alaskans in comparable occupations. [Tr. 3233; Ex. 224 at 13] Based on his analysis, Dr. Wolkoff concluded that teacher pay in Alaska is competitive.

435. As to the second topic, Dr. Wolkoff testified that teachers who work in off-road districts are, on average, paid more than teachers who work in districts on the road system. [Tr. 3248] But he also determined that the more remote districts do have "somewhat less experienced teachers, approximately a year and a half less." [Tr. 3249] Yet he found that teachers in both on and off-road districts have on average at least eight years teaching experience. [Tr. 3249-50] Overall, he concluded the differences among the teacher population in on-road vs. off-road school districts were not sizeable. [Tr. 3264]

436. He also looked at the number of teachers who moved from off-road to on-road, and on-road to off-road. He determined that there is a net impact each year of about 30 teachers leaving off-road schools – or about one-half of one percent of the total work force. Significantly, the teachers moving to

off-road schools had more teaching experience and were more likely to have advanced degrees than those who left the off-road schools. [Tr. 3258-62]

437. Dr. Wolkoff's third topic explored five teacher characteristics and their impact on student achievement. [Tr. 3265] Like Dr. Darling-Hammond, his analysis indicated that highly qualified teachers have a positive impact on student achievement. [Tr. 3288-89] He did note, however, that it is very difficult to identify what it is about certain teachers that make them more effective than others. [Tr. 3289-90] He did not analyze whether highly qualified teachers would have a stronger impact on lower performing students than on higher performing students. [Cf. Darling-Hammond Perp. Depo. at 65]

### **C. Gerald Covey**

438. Gerald Covey was the Commissioner of Education from 1991 through 1995. He has been a private consultant since that time. [Ex. 2118 at 43521] Before becoming Commissioner, he worked at the Northwest Arctic Borough School District for many years, and was superintendent of that district from 1987 through 1991. [Id.] At trial, he was qualified as an expert in the history and status of education and education reform in Alaska. [Tr. 3583]

439. Mr. Covey presented a summary of the history of education in Alaska. He noted that when the price of oil fell in the 1980's, "From that moment on, it was a whole different relationship between public education and the legislature of the State of Alaska. From that moment on, accountability entered into the conversation as it had never entered before." [Tr. 3602] It was at about this same time that the Legislature developed the chart of accounts for school

district reporting, so that the State could see how the school districts were spending government funds. 4 AAC 06.120. [Tr. 3594-95]

440. Beginning in 1991, upon appointment as Commissioner of Education, Mr. Covey undertook the development of the content standards for education in the state – to create “a definition of what kids should know and be able to do.” [Tr. 3609]

441. On cross-examination, Mr. Covey testified that he believed the State’s content standards “should be taught to all children of Alaska.” [Tr. 3659] But he added, “It’s not the decision of the people who make the standards; it’s the decision of the people who operate the schools what actually is taught.” [Tr. 3662]

442. With respect to the REAAs that were created in the late 1970’s and early 1980’s, Mr. Covey testified that in his opinion, “15 years is about enough time to get on your feet and get up and running.” [Tr. 3617]

443. Mr. Covey prepared an expert report for this case that addressed three questions: (1) is the education offered by Alaska’s school system adequate; (2) will increasing education funding to the current system improve public education; and (3) how do family and community impact student achievement? [Ex. 2118 at 43503]

444. Mr. Covey’s assessment as to the adequacy of the education offered by Alaska’s school system looked at the educational opportunities within the state, the educational reforms undertaken since 1991, and the funding equities. With respect to Alaska’s school funding program, he opined that “no

group of urban or rural students have been or are favored or disenfranchised by Alaska's school-funding program. Our government has consistently relied on a reasonable formula to distribute funds, has frequently studied the funding mechanism to improve it, and has adjusted it as necessary to more accurately reflect school-district needs." [Ex. 2118 at 43508]

445. On the second question Mr. Covey opined that increased education funding would not improve public education in Alaska. [Ex. 2118 at 43509-11, 43517-18] This opinion was based not on a statistical analysis, but on his observations over the course of his career in Alaska. He noted that when he was in Kotzebue during the mid 1970's until mid 1980's, education spending was increasing "at a record pace." [Ex. 2118 at 43509] But, "As the realities and challenges of delivering education to locally controlled rural school districts set in, two things became obvious. First, the issues of rural education could not be solved by new schools, new curricula, lower student-teacher ratios, higher educator salaries or anything else money could buy. And second, the academic results we had hoped to achieve quickly would take a long time to realize." [Ex. 2118 at 43511] He added, "You can pump all the money [in the] world into bad processes and all you get is bad processes and you get poor results from bad processes." [Tr. 3641]

446. In responding to the third question, Mr. Covey opined that "schools cannot undo or override the impacts of family and community. Strong or weak, successful or unsuccessful, our schools are a reflection of our communities." [Ex. 2118 at 43516]

447. Mr. Covey's report also indicates that if additional money were to be spent on educating children, he believes the most beneficial expenditure would be to provide a "state-approved high-quality pre-kindergarten program for all children in Alaska." [Ex. 2118 at 43518] But he did not believe that pre-K education should turn "into a part of the education foundation and a responsibility of the public schools." [Tr. 3643]

448. Mr. Covey defined the State Department of Education's role as "to provide assistance and support to school districts that are seeking to improve themselves." [Tr. 3640] He believes that the State should intervene in lower performing districts; he defined "intervention" to mean: "the Department would go in and would look at what's going on and possibly make some recommendations for change." [Tr. 3633]

449. With respect to the Yupiit School District, Mr. Covey opined that the appropriate course of action would be to wait and see what happens based on the State's involvement with the district in the fall of 2005. "If that intervention fails to produce the result we want, it would be my recommendation that the commissioner go right back out there, that he has a meeting with the public. He has the very same conversation he had with people in Chugach when he went there. You tell me what you want and you tell me what you're willing to commit to and I will stand by you until we get there, until we make some improvements, until we get this district going where we want it to go." [Tr. 3647]

**D. James Guthrie, Ph.D.**

450. James Guthrie was the State's final expert at trial. He has a doctorate degree in Educational Administration. [Tr. 3840] At trial, he was qualified as an expert in education finance and public policy and indicated he had testified approximately 30 times throughout the country as an expert witness, primarily in the area of education finance. [Tr. 3848, 3846]

451. Dr. Guthrie provided some statistics about Alaska's financing of public education relative to the other states:

- Alaska ranked fifth in the nation in 2001-2002 in the percentage of state and local revenue spent on public schools. [Ex. 2328 at 56340]
- Alaska spends a considerably greater amount of state revenue versus local revenue on its schools compared to the U.S. mean. [Ex. 2328 at 56338] It has been the variation in local contribution within a state that has been a principal source of litigation in many other states – an issue not as pronounced here given the significantly larger state contribution. [Tr. 3862-63]
- Alaska's per capita expenditures by state and local governments for public education was first in the nation in the 2001-02 school year. [Ex. 2328 at 56345]

452. The No Child Left Behind Act has an aspirational feature that suggests, but does not require, that states allocate 40% more than their base revenue per pupil to low income students. [Tr. 3869] Alaska meets this aspirational requirement in its school funding, and is the second most equitable state under this analysis. [Ex. 2328 at 56349]

453. Dr. Guthrie indicated that the majority of states do not have a weighted formula provision for at-risk students, and he did not believe adding such a formula necessary for Alaska. [Tr. 3875]

454. Dr. Guthrie also observed that Alaska uses Average Daily Membership (ADM) – or students enrolled – to compute funding. Most states use average daily attendance for school finance purposes. The use of average daily attendance, instead of membership, is an inducement to school districts to have children actually attend school. [Tr. 3866]

455. Dr. Guthrie's opinion is that Alaska's system of public education, K-12, is adequate because Alaska has "a plan for enabling students in this state to achieve to high standards ... [and] it's generating and distributing resources in a manner which enables school districts to do [the components of the plan]." [Tr. 3856-57]

456. In Dr. Guthrie's view, Alaska's educational plan includes the learning standards that the State has developed, which he found to be "sufficiently rigorous and inclusive." [Tr. 3939] It also includes the state testing system "so that the State has a chance of appraising the degree to which a student, a school, a district or the whole state is making progress toward those learning expectations." [Tr. 3872] The State also provides the school districts with technical assistance to help districts "build their capacity toward achieving these goals." [Tr. 3872] And it has developed teacher credentialing to try to "link teacher qualifications to the learning expectations so that we can train teachers in what it is that the state wants to be accomplished." [Tr. 3872-73]

457. Dr. Guthrie did not address whether students in Alaska are actually being provided with a realistic opportunity to achieve the State's expectations, nor did he address the State's role with respect to those schools or districts in which a substantial majority of the children did not appear to be achieving the State's standards, based on the test scores and other data available.

## ***VII. The Status of the State's Current Role in Education***

### ***A. Is more funding needed?***

458. Based on all of the evidence presented at this trial, this Court finds that the Plaintiffs have failed to demonstrate that the State of Alaska is inadequately funding public education for its children at this time.

459. The Court does find, based upon consideration of all the evidence, that there are at least a few schools within this state in which children are not being accorded an adequate opportunity to receive basic instruction in the subjects tested by the State: reading, writing, math, and sciences. Clearly, as former Commissioner Covey acknowledged, "we have a very serious issue" with student achievement at some schools in the state. And based on the substantial evidence presented in this proceeding, this Court agrees with his conclusion that "we cannot buy our way out of the problem." [Tr. 3637]

460. Likewise, former Commissioner Shirley Holloway testified persuasively: "[I]f money were the answer, we had it on the North Slope. If

money were the silver bullet, we would have nailed it ... It's just far more complex than just having money." [Tr. 3420]

461. Commissioner Sampson also testified in this regard: "My belief is that money was not the predictor of student performance." [Tr. 2384] The Commissioner further stated:

[W]e have examples of many schools in many districts where children are excelling from all of our ethnic groups. They're – they're getting similar resources, similar assistance from the department, they're operating under the same performance and content standards, the same assessment system. There's – there's many factors beyond just identifying the standards and funding that's making a difference on whether students reach proficiency or not.

[Tr. 2438]

462. The State has proven by a preponderance of the evidence that it is adequately funding education for school children within the State of Alaska. The evidence fully supported the testimony of Commissioner Sampson in this regard, who stated he believes the State is:

very adequately funding education. That is not to say that I don't support additional funding for K-12. I do. What I don't support is a blanket increase in funding. I'm absolutely a champion for targeted specific funding that we know is either new and has potential to give us great results or something that is already proven that more want to replicate, but just to add more money without targeting where the money goes, we spend a tremendous amount of money, we have tremendous challenges. There's enough money there to educate our kids well, but we have to stop doing things that are hard to change, that aren't getting us a return for our investment for kids.

[Tr. 2441-42]

***B. Is local control working?***

463. As noted throughout these findings, many witnesses in this case, on both sides of this dispute, testified that they firmly supported local control of school spending, curriculum and hiring – a preference that has an established basis in the history of education both in Alaska and throughout the nation.

464. Yet based on evidence presented at trial, a preponderance of the evidence has demonstrated that there are at least some schools in the Plaintiff school districts in which the available resources have not been adequately or effectively directed to the classroom. In short, there are schools in which children are not being accorded an adequate opportunity to learn the very basic fundamentals as tested by the State.<sup>22</sup>

465. Even at schools in which student performance has been extremely poor, and has shown no improvement for many years, the State has failed to provide an adequate oversight role with respect to either the considerable State funds that it disburses or with respect to the delivery of instruction to the children in those schools. In short, the State has failed to take meaningful action to maximize the likelihood that children at these troubled schools are accorded an adequate opportunity to acquire proficiency in the State's standards when a school has demonstrated an unwillingness or inability to correct this situation on its own.

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<sup>22</sup> As stated above in the court's findings, this court has found that to be the case in the schools at Yupiit, and possibly the case at Kuspuks schools.  
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466. Commissioner Sampson recognized the potential need for further legislative oversight in these very few troubled districts:

I think that the best possible education, the potential rests with the local community. That doesn't always work, but my thought would be, legislature, have two types of arenas which you allow delivery of education. One would be leave it as it is now with local control there, provided we're getting results for kids, and that, to me, doesn't mean that every student is proficient. We take them how they come. It's our job to move them forward. So if we're seeing growth and progress with those kids, I think the local community is doing a good job and the local district.

If they're not, then maybe we need to assist if, in fact, they're [not] using the resources in the best way that might result in higher achieving students. Example: I support extracurricular activities. I think that it can be valuable in engaging kids, but at what point do you continue to fund extracurricular activities at whatever level when your kids aren't showing any progress in reading and the deficiency – or proficiency levels are very low. At some point, maybe we need to not ask for new resources but redirect how we use some of those resources, and maybe that's a system that the legislature could direct down.

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[Tr. 2452-53]

467. The Commissioner also recognized that while State oversight is not without its challenges, sometimes it is easier to implement changes when directed from outside the school district: "sometimes I do think that superintendents and other leaders in those communities, they need to be able to push and point the finger that it's a different agency or someone that's requiring us to do these things that are uncomfortable. Change is hard. It's hard for communities, it's hard for schools." [Tr. 2364-65]

468. Under existing state law, EED appears to have virtually no authority to direct how a school district uses its State funds to educate the children within a school district, no matter how poorly the district's students

perform. See 4 AAC 06.840(k). And to the extent EED might have any such authority, it has never exercised it. As explained by Commissioner Sampson, even for districts that are repeatedly failing to make AYP, EED "has the ability to direct resources to a minute level [in a school district]. It's no more than a 20% hold-back of Title 1 funds, not how they establish their other priorities." [Tr. 2412]

469. The State has severely restricted its own available options for providing meaningful remedial direction in underperforming school districts. It can defer a portion of federal funds only. Or it can institute and implement a new curriculum. The other options provided by regulation are truly a last resort and, according to several witnesses at this trial, would likely meet with minimal success – replacing district personnel in cooperation with the school board, or removing schools from the jurisdiction of the district and providing for alternative ~~arrangements for public governance and supervision of such schools.~~ 4 AAC 06.840(k).

470. The Legislature has also elected to allow each school district to determine its own curriculum. Such an approach has considerable benefits for many local communities and students within those communities, as it allows each district to adjust its curriculum to the unique needs and interests of its community.<sup>23</sup> But to the extent that it permits a school district to adopt a curriculum that is not aligned with the State's content and performance standards, or not to adopt any meaningful curriculum at all, it does not maximize

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<sup>23</sup> The model is not without its detractors. For example, Spike Jorgenson of Plaintiff CEAAC opined: "there's no reason to have every school district rediscovering what a decent curriculum is." [Jorgensen Depo. at 69]

the likelihood that all children within the State are going to be accorded a meaningful opportunity to achieve proficiency on the State's assessments.

471. The State has also elected to exercise very little oversight as to how school districts are spending the money the districts receive from the State. There is very little oversight to insure that these resources are being effectively directed toward student learning. Yet, based on the evidence presented at trial, it appears that a majority of school districts are adequately directing these resources toward educating the children within their districts, and are also striving to align their curriculum with the State's content and performance standards.

472. While many witnesses testified about the benefits of local control over education, many witnesses also recognized that if a school district is not demonstrating an ability to provide a basic education to their children, then the State needs to intervene. As testified to by Shirley Holloway, former Commissioner of Education:

I do think we have a responsibility to intervene. And I think, though, the kind of regulations that we have in place now give some real clear direction for that kind of intervention. And I think we need to intervene, and I think we need to intervene earlier than we have in the past. And I think we need to be very assertive about that because one of the things the research shows us, that if a child is in a classroom where very little learning is going on, for several years in a row, we never make that up.

And so time is really important ... we just cannot afford to allow children to languish in these classrooms without having the interventions and the remediation that they need to be proficient in our world. And so I feel very strongly that the State needs to take a strong role, not ... aggressive in a negative way, but aggressive in that we have the interests of the young people at heart, and that we have a responsibility and obligation to educate every child in this state.

[Tr. 3424-25]

473. Similarly, Spike Jorgenson of Plaintiff CEAAC acknowledged the benefits of the State standards and assessments. But to him, "the thing that's missing from that are all of the instructional strategies and the really important things that teachers do in order to help kids learn. And we haven't put that together for the teachers yet. And until we do, we aren't going to have good results." [Jorgenson Depo. at 72]

474. As Paul Prussing from EED testified, each child is in the school system for only a few years, so that there is only a limited amount of time to teach each child the fundamentals. Therefore, prompt intervention is critical: "You have 720 days to teach these kids how to read. Every day is precious. Those kids that are in intensive [reading status] are the ones that are so far behind that the odds are against them, and you need to intervene quickly." [Prussing Depo. at 95]

475. The importance of both the family and community to educational success was recognized by many witnesses throughout the trial. Problems with absenteeism, drug and alcohol abuse, lack of community support, and other factors are often beyond the control of the school. [Tr. 2706, 2711] But as Bill Bjork testified, "the absence of ... an engaged parent can't be an educational death sentence for this student." [Tr. 2273] Commissioner Sampson also acknowledged, "[a]lthough we are not to blame for the many ills of our society and the troubles that students bring with them to our classroom, we can no longer use that as an excuse for the lack of student performance." [Tr. 2431]

476. The evidence at trial clearly established that considerably greater oversight by the State over the education of Alaska's children, at least at the state's most seriously underperforming schools, is critically needed. Whether such oversight is constitutionally mandated by the Education Clause of Alaska's Constitution is a determination to be made only after careful consideration of the relevant legal rulings on this issue.

### **LEGAL ANALYSIS**

#### ***I. The Education Clause in Alaska***

The Education Clause of the Alaska Constitution provides: "The legislature shall by general law establish and maintain a system of public schools open to all children of the State." Art. VII, § 1. The Alaska Supreme Court has addressed this constitutional provision in several opinions.

The primary Alaska Supreme Court decision regarding the Education Clause is Hootch v. Alaska State-Operated School System, 536 P.2d 793 (Alaska 1975). In Molly Hootch, a number of students who resided in small rural communities filed suit seeking to compel the State to provide secondary schools in their communities of residence. Students seeking a secondary school education in rural Alaska at that time were required to attend state-operated boarding schools. The students asserted that the phrase "open to all children" in the Education Clause created a right to be educated in one's own community. Id. at 799. In addressing this constitutional issue, the Supreme Court indicated it would "look to the intent of the framers of the constitution concerning the nature of the right

itself, the problems which they were addressing and the remedies they sought” to determine the nature of the right as it relates to the students’ arguments and the remedies that they sought. Id. at 800.<sup>24</sup>

As discussed by the Supreme Court in Molly Hootch, at statehood there was a dual system of education in Alaska. Id. The U.S. Bureau of Indian Affairs operated schools for Alaska Native students; the Alaska territorial government operated schools attended primarily by non-Natives. At the Alaska Constitutional Convention, there was consensus that this dual system of education should be ended. The Supreme Court held that “[i]n view of this history, we conclude that art. VII, § 1 was intended to ensure that the legislature establish a system of education designed to serve children of all racial backgrounds.” Id. at 801. And it was in this context that the phrase “open to all” should be interpreted – as “a unitary phrase embodying a requirement of nonsegregated schools.” Id.

But the Supreme Court also found that with respect to education in the state of Alaska, “[i]t seems likely that the drafters of the constitution had in mind the vast expanses of Alaska, its many isolated small communities which lack effective transportation and communication systems, and the diverse culture and heritage of its citizens.” 536 P.2d at 803. Thus, the Court concluded that unlike most state constitutions, Alaska’s Education Clause “does not require uniformity in the school system.” Id. Instead, the Court found that Article VII, § 1 of the state constitution “appears to contemplate different types of educational opportunities including boarding, correspondence and other programs without

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<sup>24</sup>See also “The Methodological Middle Ground: Finding an Adequacy Standard in Alaska’s Education Clause, 24 Alaska Law Review 73 (2007).  
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requiring that all options be available to all students." Id. The Court "conclude[d] that art. VII, § 1 permits some differences in the manner of providing education" and "that different approaches are appropriate to meet the educational needs in the diverse areas of the state." Id. at 803-04. Based on this analysis, the Court held that the Education Clause did not entitle the Plaintiffs in that case the right to attend secondary schools in their home communities, and that they had been afforded a constitutionally adequate right to an education through the boarding school opportunity accorded to them, absent an equal protection claim. Id. at 804-05.<sup>25</sup>

An earlier reference to the Education Clause by the Alaska Supreme Court is found in Macauley v. Hildebrand, 491 P.2d 120 (Alaska 1971). There, the Juneau borough had adopted an ordinance that required the local school district to participate in centralized accounting. The school board brought suit, seeking a permanent injunction against the borough. The Alaska Supreme Court held that the injunction was warranted because of the Education Clause, which specifies that the Legislature has ultimate responsibility for education. 491 P.2d at 122.

The Court held with respect to the clause:

This constitutional mandate for pervasive state authority in the field of education could not be more clear. First, the language is mandatory, not permissive. Second, the section not only requires that the legislature 'establish' [sic] a school system, but also gives to that body the continuing obligation to 'maintain' the system. Finally, the provision is unqualified; no other unit of government shares responsibility or authority. That the legislature has seen fit to delegate certain educational functions to local school boards in order that Alaska schools might be adapted to meet the varying

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<sup>25</sup> The case was remanded to the trial court on the equal protection claim, where it was eventually settled between the parties. Tobeluk v. Lind, 539 P.2d 873, 975 (Alaska 1979).

conditions of different localities does not diminish this constitutionally mandated state control over education.

491 P.2d at 122.

The Supreme Court again referred to the Education Clause in Breese v. Smith, 501 P.2d 159 (Alaska 1972). There, a student was suspended because his hair violated the school's hair length regulation. The student asserted, among other claims, that the suspension violated his right to an education under Art. VII, § 1 of the Alaska Constitution. The Supreme Court invalidated the suspension. Although the Court's decision in Breese was based on the right to liberty set forth in Art. I, § 1 of the Alaska Constitution, the decision also referred to the Education Clause, which the Court stated "guarantees all children of Alaska a right to public education." 501 P.2d at 167.

The same month that the Alaska Supreme Court issued its decision in the Molly Hootch case, it decided Alaska State-Operated School System v. Mueller, 536 P.2d 99 (Alaska 1975). That case presented the question of whether the State-Operated School System was a state agency for purposes of service of process. In holding that the school system was a state agency, the Court referred to the Education Clause and held that the system "is performing the clearly governmental function of furnishing education to the children of Alaska in the unorganized borough (for which the legislature is required to provide by article VII, section 1 of the constitution)." 536 P.2d at 102.

The Alaska Supreme Court again cited to the Education Clause in Tunley v. Municipality of Anchorage School District, 631 P.2d 67 (Alaska 1980). There, the Anchorage School Board had decided to close two elementary schools. Parents

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of students affected by the decision filed suit seeking to prevent the school closures. The Plaintiffs asserted, among other arguments, that the schools could only be closed with the State's consent. In rejecting this argument, the Supreme Court held that there were no statutes or regulations that required the district to obtain the State's consent. Id. at 78. The Court also recognized that "[t]he Anchorage School Board was created by authority of the state legislature, and is the delegated state authority to govern its school district and manage the operations of the schools within that district." Id. at 75. The Court added, "Historically, Americans have considered schools to be an extension of the local community. Thus, although state legislatures possess plenary power over the educational system, local initiative with respect to education is so highly regarded that most states have delegated extensive authority over the actual administration of the schools to local institutions." Id. at 75, n. 17 (*quoting Project, Education and the Law: State Interests and Individual Rights*, 74 Mich. L. Rev. 1373, 1380 (1976) (footnotes omitted)).

In Matanuska-Susitna Borough School District v. State, 931 P.2d 391 (Alaska 1997), a group of borough school districts, parents and individual tax payers brought an equal protection claim alleging that the educational interests of local school children had been negatively effected by the state's statutory system of providing aid for costs of school construction. Id. at 394. Under the statutory system, REAA districts received 98% state funding for school construction, whereas non-REAA districts received only 70% state funding. Id. at 396, *citing* AS 14.11.005-.019. The Plaintiffs asserted that the differential treatment

between the REAA districts and non-REAA districts violated their rights to equal protection of the law under the state constitution. The Supreme Court dismissed the aspect of the plaintiffs' claim that was based on educational opportunity, ruling that "the individual Plaintiffs have failed to [ ] show that disparities in the local contribution required of districts translate into disparities in the educational opportunities available to students." Id. at 397. With respect to that aspect of the equal protection claim that focused on the construction funding disparity, the Court found the economic interest asserted to be "at the low end of the continuum of interests protected by the equal protection clause" such that the state need only show its objectives were legitimate. Id. at 398, (*quoting Atlantic Richfield Co. v. State*, 705 P.2d 418, 437 (Alaska 1985), *appeal dismissed*, 474 U.S. 1043 (1986)). The Court concluded that the state's objective in its public school foundation program – "to assure an equitable level of educational opportunities for those in attendance in the public schools of the state" – was legitimate. Id. at 399 (*quoting AS 14.17.220*). In this regard, the Court cited to the Education Clause and its constitutional mandate to the legislature to "ensure equitable educational opportunities across the state." Id. The Court then found that the funding formula bore the requisite "fair and substantial relationship" to the government's educational objectives. Id.<sup>26</sup>

Finally, the Alaska Supreme Court addressed the Education Clause in Municipality of Anchorage v. Repasky, 34 P.3d 302 (Alaska 2001). At issue was

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<sup>26</sup> In a concurring opinion, Justice Matthews, joined by Justice Rabinowitz, noted that the Mat-Su case presented "no claim that funds available to any Alaska school district are insufficient to pay for a level of education which meets standards of minimal adequacy." 931 P.2d at 405.

whether the Anchorage mayor could veto components of the school district's budget. The Supreme Court, in a 3-1 decision,<sup>27</sup> held that the mayor had this veto power. The Court, citing to its decision in Macauley,<sup>28</sup> recognized that "while the legislature has delegated significant local control over education, this Court has made it clear that the Alaska Constitution mandates 'pervasive state authority in the field of education.'" 34 P.3d at 306. The Plaintiffs had asserted, among other arguments, that a mayoral veto power would be substantially irreconcilable with state law. Id. at 310-315. But the Court held the mayoral veto power was not irreconcilable because such action "in our view, does not detract from the school board's role in proposing a budget, deciding how to spend amounts appropriated and setting educational policy, or administering expenditures after appropriation." Id. at 313.

Although not an Alaska Supreme Court decision, the 1999 trial court decision in Kasayulie v. State, (3AN-97-3782 CI) is also instructive. In Kasayulie, the REAA Plaintiffs sought a declaratory judgment that the State's method of funding for schools in rural areas of the state violated the Education Clause, among other claims. The State argued that the Education Clause did not require the State to provide buildings for schools, but only required the State to establish and maintain a school system. Id. at 4. The trial court disagreed and held that "facilities funding is an integral part of education and as such is inseparable from the state's obligation to establish and maintain a public education system." Id. The Court granted the Plaintiffs' motion for summary judgment, finding that the

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<sup>27</sup> Justice Fabe did not participate in the case.

<sup>28</sup> Macauley v. Hildebrand, 491 P.2d 120, 122 (Alaska 1971).

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State's failure "to provide adequate funding for [school] facilities in rural areas violates the Education Clause." *Id.* at 6.

## ***II. Education Clause Litigation in Other States***

Every state in the union has some form of an education clause in its state constitution which requires the state legislature to provide its school children with a free public education. There has been a great deal of litigation regarding education in other states. The cases have focused primarily on school funding, and have typically taken the form either of equity claims or adequacy claims.

"The equity approach relies on the equal protection provisions of the federal or applicable state constitution to argue that students in poor districts are not afforded the same educational opportunities as students in more affluent districts. In contrast, the adequacy approach, based exclusively on the general 'education clause' of the applicable state constitution, rests on the premise of a constitutional guarantee of a minimum standard of education for all students."<sup>29</sup> The equity approach was generally the approach first used in school funding litigation, whereas the adequacy approach has been the focus of more recent litigation.

The history in two states with adequacy litigation – Arkansas and North Carolina – is illustrative.

In 2002, the Arkansas Supreme Court in Lake View School District No. 25 of Phillips County v. Huckabee, 91 S.W.3d 472 (Ark. 2002), recapped that case's

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<sup>29</sup> The Oregon Legislature's Constitutional Obligation to Provide an Adequate System of Public Education, 42 Willamette L. Rev. 489, 503 (2006).  
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10-year history. The case had begun in 1992, and in 1994, a trial court judge ruled that the school funding system then in place in Arkansas violated the Education Clause and the Equality provisions of the Arkansas Constitution. Id. at 477. The judge stayed the effect of the order for two years so as to enable the Arkansas General Assembly to enact a constitutional school funding system that would be in accordance with the court's opinion. Id.

In 1995, the Arkansas legislature responded by enacting a new school funding system. Id. Over the next four years, the Arkansas legislature passed a number of additional school funding provisions which culminated in 1999, when the General Assembly appropriated funds for public education totaling more than \$1.6 billion and established the Arkansas Comprehensive Testing Assessment and Accountability Program (ACTAAP) to assess and evaluate academic progress and performance in public schools. Id. at 478-79.

In 2001, the trial court ruled that the post-1994 school funding system was still unconstitutional on the twin grounds of inadequacy under the Education Article and inequality under the Equality provisions of the Arkansas Constitution. Id. at 479. On appeal, the state argued that an adequate education in Arkansas would be impossible to define. Id. at 486. The state also argued that there was no correlation between enhanced school funding and better student performance. Id. at 488. Additionally, the state pointed to the ACTAAP program for assessing and evaluating student performance in English and mathematics as a positive step that the state had already taken. Id.

The Arkansas Supreme Court agreed with the trial court's ruling of continued unconstitutionality. Its opinion noted "Arkansas' abysmal rankings in certain key areas respecting education." Id. Specifically, the Court noted the results of the State's own benchmark testing for eighth-grade students in April 2000 showed that statewide, only 16% of the students were proficient or above in math, and in the Little Rock School District only 9% were proficient or above. Id. Additionally, the court noted that 58% of Arkansas high school students entering state universities needed remediation in either English or math. Id. The Arkansas Supreme Court held that the "State has an absolute duty under our constitution to provide an adequate education to each school child" and that "the State has not fulfilled its constitutional duty to provide the children of this state with a general, suitable, and efficient school-funding system." Id. at 495.

Most recently, on May 31, 2007, the Arkansas Supreme Court at long last issued an order concluding the Lake View litigation after finding that Arkansas' "public-school financing is now in constitutional compliance." Lake View v. Huckabee, \_\_\_ S.W.3d \_\_\_ (Ark. May 31, 2007) 2007 WL 1560547, Slip Op. at 10. The court acknowledged the state legislature's substantial infusion of additional funding into public school facilities. In addition, the court acknowledged the increased legislative funding per student, as well as the increased categorical funding for English language learners, students qualifying for free or reduced lunch, and students in alternative learning environments. The court noted that teacher salaries were found to be competitive with the surrounding states. And the court acknowledged "a critical component" of the

legislative undertaking: “the comprehensive system for accounting and accountability, which has been put in place to provide state oversight of school-district expenditures.” *Id.* See A.C.A. § 10-3-2102.

North Carolina’s school funding litigation began with Leandro v. State, 488 S.E.2d 249 (1997). In that case, the North Carolina Supreme Court held that “the North Carolina Constitution does guarantee every child of the state the opportunity to receive a ‘sound basic education.’” 488 S.E.2d at 259. The court then, “with some trepidation,” proceeded to define a sound basic education, and noted “[a]n education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate.” *Id.* at 259, 254.

Ultimately, the North Carolina Supreme Court defined a “sound basic education” as one that provides students with at least:

- (1) sufficient ability to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society;
- (2) sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student’s community, state, and nation;
- (3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training;
- and (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.

488 S.E.2d at 255, *citing* Rose v. Council for Better Educ., Inc., 790 S.W. 2d 186, 212 (Ky. 1989).

The North Carolina Supreme Court also provided a list of evidentiary factors that the trial court should consider in determining whether a sound basic

education was being provided: (1) educational goals and standards adopted by the legislature; (2) the level of performance of the children on standardized achievement tests; (3) the level of the State's general educational expenditures and per-pupil expenditures; and (4) any other relevant factors. 488 S.E.2d at 259-60.

Using the evidentiary standards set out in Leandro, the case of Hoke County Board of Education v. North Carolina, 599 S.E.2d 365 (N.C. 2004) went to trial. There, the Plaintiffs presented evidence of: (1) comparative standardized test score data; (2) data on student graduation rates, employment potential, and post-secondary education success; (3) deficiencies pertaining to the educational offerings in Hoke County schools; and (4) deficiencies pertaining to the educational administration of Hoke County schools. Hoke, 599 S.E.2d at 381. Based on that review, the trial court ruled that the education in Hoke County was constitutionally inadequate under the Leandro standard for essentially two reasons: that the State had "(1) failed to identify the inordinate number of 'at-risk' students and provide a means for such students to avail themselves of the opportunity for a sound basic education; and (2) failed to oversee how educational funding and resources were being used and implemented in Hoke County schools." The trial court then ordered the State "to reassess its Hoke County educational obligations." 599 S.E.2d at 390.

On appeal, the North Carolina Supreme Court affirmed these determinations, and upheld the trial court's ruling, holding that the trial court had appropriately "(1) informed the State what was wrong with Hoke County schools; (2) directed

the State to reassess its educational priorities for Hoke County; and (3) ordered the State to correct any and all education-related deficiencies that contribute to a student's inability to take advantage of his right to the opportunity to obtain a sound basic education." 599 S.E.2d at 390.

***III. Is there a constitutional right to pre-kindergarten education in any other state?***

Three state supreme courts have examined the specific issue of whether children in their state have a constitutional right to pre-kindergarten education. All three of those supreme courts have held that such programs are not constitutionally required; all three found that the issue is a matter of public policy best left to the legislature. See Hancock v. Commissioner of Education, 822 N.E.2d 1134 (Mass. 2005); Lake View School District No. 25 v. Huckabee, 91 S.W.3d 472 (Ark. 2002); Hoke County Board of Education v. North Carolina, 599 S.E.2d 365 (N.C. 2004).<sup>30</sup>

In 2005, the Massachusetts Supreme Court discussed the history of education reform in Massachusetts in Hancock. 822 N.E.2d at 1134. Among the milestones the court examined was the decision by the Massachusetts Supreme Court in McDuffy v. Secretary of the Executive Office of Education, 615 N.E.2d 516 (Mass. 1993), in which the Court held that the Commonwealth had failed to

<sup>30</sup> New Jersey has also addressed pre-kindergarten education. Abbott v. Burke, 748 A.2d 82 (N.J. 2000). Abbott, however, was premised on a statutory right to pre-kindergarten education. N.J. Stat. Ann. § 18A:7F-16 provides that "[e]arly childhood programs shall be distributed to all school districts with high concentrations of low-income pupils, for the purpose of providing full-day kindergarten and preschool classes and other early childhood programs and services."

fulfill its constitutional obligation when it delegated responsibility for public education to local communities and the State's education funding relied almost exclusively on local property taxes. Hancock, 822 N.E.2d at 1137. After the McDuffy decision, Massachusetts passed the Education Reform Act of 1993. Id. The act declared that its goal was to provide a high quality public education that would extend to all children "the opportunity to reach their full potential and to lead lives as participants in the political and social life of the [C]ommonwealth and as contributors to its economy." Id. at 1138. (quoting G.L. c. 69, § 1). The act "radically restructured the funding of public education across the Commonwealth." Id.

The Plaintiffs in Hancock claimed that public education in their districts had not improved significantly since 1993 and that the Commonwealth was still in violation of its constitutional obligation to educate children. Id. The Massachusetts Supreme Court assigned a trial court judge to serve as a master to the Supreme Court. Id. That judge recommended that the Supreme Court order the Department of Education to undertake a wide-ranging study that would include ascertaining the cost of implementing seven curriculum frameworks, including free preschool for all three and four year olds. Id. at 1156.

The Massachusetts Supreme Court disagreed with that recommendation and refused to order the study. In this regard, the Massachusetts Supreme Court held:

[T]he study ... is rife with policy choices that are properly the Legislature's domain. The study would assume, for example, that in order to fulfill its constitutional obligation under the education clause, the Commonwealth "must" provide free preschool for all three and four

year old children "at risk" in the focus districts, and presumably throughout the Commonwealth thereafter. That is a policy decision for the Legislature.

Id. The Massachusetts court also held that "[o]ther programs might be equally effective to address the needs of at risk students." Id. at 1157. The court discussed the complexity of education policy in general and noted the "disagreement between competent experts on how best to remediate a nonperforming or poorly performing school district." Id. (quoting dissent of Greaney, J.). The court held that because of that complexity and disagreement, "we leave it to the [Governor] and the Legislature[ ] to define the precise nature of the task which they face in fulfilling their constitutional duty to educate our children." Id. (quoting McDuffy, 615 N.E.2d at 554).

Similarly, the Arkansas Supreme Court in Lakeview School District No. 25 v. Huckabee, 91 S.W.3d 472, 501 (Ark. 2002), addressed, among many other issues, whether a constitutionally adequate education required a pre-kindergarten program. The State argued that while it might "agree that as a matter of public policy pre-kindergarten programs may be one way to increase student achievement, it does not agree that such programs are mandated by the Arkansas Constitution." Id. at 500. The Arkansas Supreme Court agreed and held, "the trial court could not order the implementation of pre-school programs. That is a public-policy issue for the General Assembly to explore and resolve." 91 S.W.3d at 501.

The North Carolina Supreme Court came to a similar conclusion in Hoke County Board of Education v. North Carolina, 599 S.E.2d 365 (N.C. 2004). In

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that case, the State conceded the need for assistance for "at-risk" prospective enrollees in Hoke County, but the North Carolina Supreme Court held that "there is a marked difference between the State's recognizing a need to assist 'at-risk' students prior to enrollment in the public schools and a court order compelling the legislative and executive branches to address that need in a singular fashion." Id. at 393. In the North Carolina Supreme Court's view, requiring the state to provide pre-kindergarten programs to at-risk children was a specific court-imposed remedy and that "specific court-imposed remedies are rare, and strike this Court as inappropriate." Id. The court reasoned that public school education was a matter "clearly designated in our state Constitution as the shared province of the legislative and executive branches" and although the evidence presented supported providing additional assistance to "at-risk" children, the evidence "d[id] not support the imposition of a narrow remedy that would effectively undermine the authority and autonomy of the government's other branches." Id.

#### ***IV. The Legislative Delegation of Responsibility Under Alaska Law***

The Education Clause places the responsibility upon the Alaska State Legislature to "establish and maintain schools" within the state. An issue that has been raised in this litigation is the extent to which the Legislature can delegate that constitutional responsibility to school districts. Several Alaska Supreme Court cases have addressed this delegation issue in different contexts.

In State v. Fairbanks North Star Borough, 736 P.2d 1140 (Alaska 1987), the Fairbanks borough and school district brought an action challenging the constitutionality of the Executive Budget Act. That Act allowed the governor to withhold or reduce appropriations, including appropriations to municipalities and school districts, when revenue shortfalls were anticipated. The Plaintiffs argued that the Act was unconstitutional for two reasons: first, because it impermissibly delegated power over appropriations to the executive branch instead of the legislature, and second, because "the statute lack[ed] standards to guide the exercise of administrative discretion." Id. at 1142.

The Supreme Court quoted with approval from Synar v. United States, 626 F.Supp. 1374, 1386 (D. D.C. 1986), which held, "[w]hen the scope [of the delegation] increases to immense proportions ... the standards must be correspondingly more precise. The essential inquiry is whether the specific guidance 'sufficiently marks the field within which the administrator is to act so that it may be known whether he has kept within it in compliance with the legislative will.'" Synar, 626 F.Supp. at 1386-87 (*citation omitted*).

In Fairbanks North Star Borough, the Alaska Supreme Court noted that the governors had actually exercised their powers under this Act quite narrowly. But "the issue in this case is not what has been done under the statute; rather it is what can be done. The limited exercise of authority undertaken [by the governors pursuant to the Act] cannot save a statute which amounts to legislative abdication." 736 P.2d at 1144. The Alaska Supreme Court held that the Act was unconstitutional "because it authorizes the exercise of sweeping power [by the

governor] over the entire budget with no guidance or limitation” from the Legislature. Id. at 1142-43.

The Alaska Supreme Court again examined the issue of delegation in Municipality of Anchorage v. Anchorage Police Dep't. Employees Assn., 839 P.2d 1080 (Alaska 1992). In that case, the Municipality sought to have a binding arbitration provision in the Municipal Code declared unconstitutional. It argued that the use of an arbitrator impermissibly delegated the Assembly's legislative power and that there were insufficient standards to guide the arbitrator's decision. Id. at 1085. But the Alaska Supreme Court disagreed and upheld the provision, holding that “[i]n light of the elaborate and detailed structure which guides the arbitrator's decisions and guards against arbitrary action we conclude that the Code's delegation of legislative authority is constitutional.” Id. at 1089.

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The court also cited with approval to Professor Davis, who stated:

The focus should not be exclusively on standards; it should be on the totality of protections against arbitrariness, including both safeguards and standards. The key should no longer be statutory words; it should be the protections the administrators in fact provide, irrespective of what the statutes say or fail to say. The focus of judicial inquiries thus should shift from statutory standards to administrative safeguards and administrative standards.

1 K. Davis, *Administrative Law*, § 3:15, at 206-07.

More recently, the Alaska Supreme Court examined the issue of delegation in Usibelli Coal Mine, Inc. v. State, Dep't of Natural Res., 921 P.2d 1134 (Alaska 1996). Usibelli was challenging regulations promulgated by the Department of Natural Resources (DNR) regarding royalty rates. Usibelli argued, among other issues, that the regulations were unconstitutional because of a lack of sufficient

standards and procedures in the legislative delegation to DNR. The Supreme Court, however, upheld the legislative delegation, finding that "coal leasing on state lands is a narrow area or field, [and] this is a delegation of 'broad authority to an agency with expertise to regulate a narrowly defined field.'" *Id.* at 1145 (citations omitted). Moreover, the Court concluded "there are sufficient standards and procedural safeguards to ensure the valid exercise of agency authority in this case." *Id.* In its discussion, the Court noted, "We have adopted a sliding-scale approach in analyzing the validity of a delegation of authority." 921 P.2d at 1144 (citing *Fairbanks North Star Borough*, 736 P.2d at 1143). "The constitutionality of a delegation is determined on the basis of the scope of the power delegated and the specificity of the standards to govern its exercise." *Id.*

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*V. Delegation of Education Responsibility in Other States*

Several states have examined the issue of delegation within the specific context of education. In *Butt v. California*, 842 P.2d 1240 (Cal. 1992), the Richmond School District announced that it lacked the funds to complete the final six weeks of the 1990-91 school year and that it was going to close its schools early. Parents of children who attended the schools brought an action seeking to compel the state to take action to prevent the planned closings. The California Court articulated the issue before it as follows: "Whether the State has a constitutional duty, aside from the equal allocation of educational funds, to prevent the budgetary problems of a particular school district from depriving its students of 'basic' educational equality." *Id.* at 1243. The State argued that it

had no constitutional duty to ensure prudent use by local administrators of the funds distributed to each district and that the State's refusal to intervene must be upheld as rationally related to its policy of local control and accountability. Id. at 1247.

The California Supreme Court held that the State had a duty to oversee the District's financial management of the funds that the State distributed to it. "Public education is an obligation which the State assumed by the adoption of the Constitution." Id. at 1248 (citations omitted). It is "the State's ultimate responsibility for public education [and it] cannot be delegated to any other entity." Id. (citations omitted). "The State's responsibility . . . extends beyond the detached role of fair funder or fair legislator. In extreme circumstances at least, the State 'has a duty to intervene.'" Id. at 1253.

The California Supreme Court also disagreed with the State's argument that "[a]llowing the District's students to absorb the consequences of District mismanagement ... was necessary to preserve the State's compelling educational policy of local autonomy and accountability." Id. In response to that argument the Court held that:

The legislative decision to emphasize local administration does not end the State's constitutional responsibility for basic equality in the operation of its common school system. Nor does disagreement with the fiscal practices of a local district outweigh the rights of its blameless students to basic educational equality.

Id. at 1254.

Although the California Supreme Court upheld the trial court's order approving an emergency State loan and appointment of an administrator to take temporary charge of the District's operation, the court also noted that:

[N]othing in our analysis is intended to immunize local school officials from accountability for mismanagement, or to suggest that they may indulge in fiscal irresponsibility without penalty. The State is constitutionally free to legislate against any recurrence of the Richmond crisis. It may further tighten budgetary oversight, impose prudent, nondiscriminatory conditions on emergency State aid, and authorize intervention by State education officials to stabilize the management of local districts whose imprudent policies have threatened their fiscal integrity ... The State's plenary power over education includes ample means to discourage future mismanagement in the day-to-day operations of local districts.

Id. at 1255-56.

In Claremont Sch. Dist. v. Governor, 794 A.2d 744, 751 (N.H. 2002), the New Hampshire Supreme Court examined whether the New Hampshire legislature and governor had the obligation to adopt standards of accountability to ensure delivery of a constitutionally adequate education. Like many education cases, Claremont has a lengthy litigation history that began in 1992. Id. at 745.

In the initial litigation, the New Hampshire Supreme Court "specifically acknowledged that the task of defining the parameters of the education mandated by the constitution is in the first instance for the legislature and the Governor." Id. at 746 (*citing* Claremont, 635 A.2d at 1375). After that ruling, the New Hampshire legislature attempted to draft comprehensive reform legislation, but further litigation ensued.

In Claremont II, the State argued that it was only accountable for devising a system to deliver a constitutionally adequate education. Id. at 751. However, the

New Hampshire Supreme Court disagreed and held that accountability was more than creating a system to deliver an adequate education:

Accountability means that the State must provide a definition of a constitutionally adequate education, the definition must have standards, and the standards must be subject to meaningful application so that it is possible to determine whether, in delegating its obligation to provide a constitutionally adequate education, the State has fulfilled its duty.

Id. at 751. While the court held that the State may delegate its duty to provide a constitutionally adequate education to local school districts, "it must do so in a manner that does not abdicate the constitutional duty it owes to the people." Id. at 755.

In Campaign for Fiscal Equity, Inc. v. New York, 100 N.Y.2d 893 (N.Y. 2003), the State argued that the Board of Education's mismanagement of revenues was responsible for the failure to provide a sound basic education to New York City school children. Id. at 921. The New York Court of Appeals disagreed:

[T]he State's argument on Board of Education mismanagement fails for a [ ] basic reason. ... [B]oth the Board of Education and the City are "creatures or agents of the State," which delegated whatever authority over education they wield. Thus, the State remains responsible when the failures of its agents sabotage the measures by which it secures for its citizens their constitutionally-mandated rights.

Id. at 922 (internal citation omitted).

In Lake View Sch. Dist. No. 25 of Phillips County v. Huckabee, 91 S.W.3d 472 (Ark. 2002), the Arkansas Supreme Court held that the State had not fulfilled its duty to provide the children of this state with a general, suitable, and efficient school-funding system. The Court held:

No longer can the State operate on a "hands off" basis regarding how state money is spent in local school districts and what the effect of that spending is. Nor can the State continue to leave adequacy and equality considerations regarding school expenditures solely to local decision-making.

Id. at 511.

Similarly, in Hoke County Board of Education v. State, 599 S.E.2d 365 (N.C. 2004), the North Carolina Supreme Court found that the local school board was not "strategically allocating the available resources" so as to accord to the at-risk children within Hoke County a constitutionally adequate education. 599 S.E.2d at 388-89. The Supreme Court held the State accountable for "fail[ing] to oversee how educational funding and resources were being used and implemented in Hoke County schools." Id. at 390. In doing so, it rejected the State's argument that it should not be held responsible for the local school board's misallocation of funds, because that would "undermine the authority of ... [local] school boards." Id. at 389. Instead, by holding the State accountable, the court "placed responsibility for the school board's actions on the entity – the State – that created the school board and that authorized the school board to act on the State's behalf." Id.

#### ***VI. Substantive Due Process***

In addition to their claims under the Education Clause of the Alaska Constitution, the Plaintiffs assert that certain components of the current education system in Alaska violate their substantive due process rights. Specifically, the Plaintiffs assert that the state-required graduation exam is

"fundamentally unfair" because "not all courses or content which are tested in the exam are available to each child" in the State. [Plaintiffs' Proposed Findings of Fact and Conclusions of Law at 138-140.] The Plaintiffs also argue that the funding formula's flat 20% add-on for special education, bilingual education, gifted education, and vocational education violates due process because the formula does not account for the varying needs of the students in each district and results in the "arbitrary denial of those services to some students." Id. Finally, the Plaintiffs argue that the Legislature's funding of REAA school districts is arbitrary and capricious and that "depriving them of a constitutional education more readily available to children in other school districts [is] contrary to the due process clause." Id.

The Alaska Supreme Court has held that as a general rule, "[t]he standard for establishing a substantive due process violation is rigorous. A due process claim will only stand if the state's actions 'are so irrational or arbitrary, or so lacking in fairness, as to shock the universal sense of justice.'" Church v. State, Dep't of Revenue, 973 P.2d 1125, 1130 (Alaska 1999) (quoting Application of Obermeyer, 717 P.2d 382, 386-87 (Alaska 1986)).

Likewise, in Concerned Citizens of South Kenai Peninsula v. Kenai Peninsula Borough, 527 P.2d 447, 452 (Alaska 1974), the Supreme Court held "[s]ubstantive due process is denied when a legislative enactment has no reasonable relationship to a legitimate governmental purpose." (citing Mobile Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92, 101 (Alaska 1974)). The "constitutional guarantee of substantive due process assures only that a

legislative body's decision is not arbitrary but instead based upon some rational policy." Id.

In deciding whether an ordinance violates substantive due process "[i]t is not a court's role to decide whether a particular statute or ordinance is a wise one; the choice between competing notions of public policy is to be made by elected representatives of the people." Id.

A court's inquiry into arbitrariness begins with the presumption that the action of the legislature is proper.<sup>31</sup> The party claiming a denial of substantive due process has the burden of demonstrating that no rational basis for the challenged legislation exists. This burden is a heavy one, for if any conceivable legitimate public policy for the enactment is apparent on its face or is offered by those defending the enactment, the opponents of the measure must disprove the factual basis for such a justification.

527 P.2d at 452.

More than 27 years later, the Alaska Supreme Court reiterated that "[t]he party claiming a denial of substantive due process has the burden of demonstrating that no rational basis for the challenged legislation exists." Griswold v. Homer, 34 P.3d 1280, 1284 (Alaska 2001)(quoting Concerned Citizens, 527 P.2d at 452). In Griswold, the Supreme Court held that a change in a zoning ordinance did not violate Griswold's substantive due process rights because the change was consistent with the city's comprehensive zoning plan, was enacted to serve the general interests of the community, and was supported by legitimate, nondiscriminatory justifications. Id. at 1284.

A different substantive due process standard applies when fundamental rights are at stake. In that case, the strict scrutiny standard of review would

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<sup>31</sup> Citing Leege v. Martin, 379 P.2d 447, 452 (Alaska 1963); DeArmond v. Alaska State Dev. Corp., 376 P.2d 717, 721 (Alaska 1962).  
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apply to the substantive due process claim. See Treacy v. Municipality of Anchorage, 91 P.3d 252, 268 (Alaska 2004). Under this standard, the government is prohibited "from infringing on fundamental liberty interests unless that infringement is narrowly tailored to serve a compelling state interest." Id. at 268.

In Treacy, the Alaska Supreme Court recognized that parents have a fundamental right to control the upbringing of their children. However, the Court upheld the constitutionality of the city's juvenile curfew ordinance "[b]ecause the municipality's interest is sufficiently compelling, and because the ordinance presents the least restrictive alternative for meeting all of its stated goals." Id. at 269.

Finally, the due process clause also requires that the government can not act in a manner that is "fundamentally unfair." See, e.g., Sands v. Green, 156 P.3d 1130 (Alaska 2007); State, DNR v. Greenpeace, Inc., 96 P.3d 1056 (Alaska 2004).

As Plaintiffs note, this concept was raised in the context of high school graduation exams in Debra P. v. Turlington, 644 F.2d 397 (5<sup>th</sup> Cir. 1981). There, the federal court held that the state of Florida could not administer its exit exam "until it has demonstrated that the [test] is a fair test of that which is taught in its classrooms." Id. at 408. Thus, the court put the burden on the state of Florida, not the Plaintiffs, to demonstrate that the testing material was covered. There, the Plaintiffs were African-American, and had asserted that their lower pass rate on the test was due to the present effects of past intentional segregation.

Based upon consideration of the Findings of Fact and the Legal Analysis as set forth herein, this Court enters the following:

### **CONCLUSIONS OF LAW**

#### ***I. The Education Clause***

1. The Alaska Constitution requires that the Legislature “establish and maintain a system of public schools.” Art. VII, § 1. The primary question in this case – whether the public education system in Alaska is constitutionally adequate – can not be framed solely in terms of funding, but must also address the opportunity for children to obtain an education. Funding is just one component of the State’s public school system.

2. The Legislature has the ultimate responsibility and plenary power over the education of Alaska’s children. Macauley v. Hildebrand, 491 P.2d 120, 122 (Alaska 1971). It has chosen to delegate that responsibility in large part to the local school districts operating throughout the state. Certainly, the Legislature has the authority to delegate this important responsibility, so long as it establishes adequate standards to guide the local districts. See, e.g., Hertz v. State, 22 P.3d 895, 903 (Alaska 2001). However, the Legislature retains both the constitutional “responsibility and the authority” to maintain the schools in this state. Macauley, 491 P.2d at 122.

3. In addition to delegating the operation of schools to the local school districts, the Legislature has delegated supervision of education to the executive branch, through the creation of the State Board of Education and the

Department of Education and Early Development. The Plaintiffs have maintained this action against the State of Alaska. It is both the legislative and executive branches' actions or inactions that are at issue with respect to the provision of education in Alaska. See generally Municipality of Anchorage v. Anchorage Police Dep't. Employees Ass'n., 839 P.2d 1080, 1089 (Alaska 1992).

4. This Court has carefully considered all the evidence presented in this case, together with the applicable Alaska case law and, to a lesser extent, the determinations by other courts regarding educational adequacy pursuant to their constitutions. Based upon those considerations, this Court determines that the State's constitutional obligation to maintain schools has four components.

5. First, there must be rational educational standards that set out what it is that children should be expected to learn. These standards should ~~meet or exceed a constitutional floor of an adequate~~ knowledge base for children. Second, there must be an adequate method of assessing whether children are actually learning what is set out in the standards. Third, there must be adequate funding so as to accord to schools the ability to provide instruction in the standards. And fourth, where, as here, the State has delegated the responsibility to educate children to local school districts, there must be adequate accountability and oversight by the State over those school districts so as to insure that the districts are fulfilling the State's constitutional responsibility to "establish and maintain a system of public schools" as set forth in Article VII, § 1 of Alaska's Constitution.

### *The Content and Performance Standards*

6. As to the first component, considerable evidence was presented at trial regarding the development and refinement of the State's content and performance standards. The Court also heard from many witnesses -- for both the Plaintiffs and the State -- that the standards represent an appropriate road map for what children in Alaska should learn. The extensive evidence presented on the State's standards all leads readily to the conclusion that these standards are thorough and appropriate educational standards for Alaska that meet or exceed the constitutional threshold of an adequate education.

7. Several state courts have adopted a list of skills -- often called "capabilities" or "competencies" -- that must be included in an adequate education.<sup>32</sup> These have also been referred to as the "Rose factors,"<sup>33</sup> after the ~~Kentucky case in which such standards were articulated.~~

8. In determining the State's compliance with the Education Clause, this Court does not find it necessary or appropriate to adopt the State's existing content and performance standards as a constitutional definition of educational adequacy. The Plaintiffs do not dispute the adequacy of the State's standards. See, e.g., Pls. Proposed Findings at 42, ¶115. In these circumstances, it is sufficient that the State has demonstrated that it adopted a comprehensive set of content and performance standards through an extensive collaborative process, and that the resultant standards define an education that meets or exceeds the "constitutional floor" of an adequate education.

<sup>32</sup> See, e.g., cases listed at Plaintiffs' Proposed Findings at FN 238.

<sup>33</sup> Rose v. Council for Better Education, Inc., 790 S.W.2d 186 (Ky. 1989).

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9. This Court also finds that the Education Clause does not require the State to insure that each child achieves proficiency in the content and performance standards. Stated differently, the Education Clause does not make the State a guarantor that each child will actually achieve proficiency in the performance standards. Instead, this Court finds that the Education Clause requires the State to take ultimate responsibility for insuring that each child in this state is accorded a meaningful opportunity to achieve proficiency in reading, writing, math, and science – the four subjects encompassed within the State's performance standards.<sup>34</sup>

10. With respect to the State's content standards on subjects other than reading, writing, math, and science, it is sufficient from a constitutional standpoint that each student receives meaningful exposure to those other content standards during the course of that child's schooling. This Court does not interpret the Education Clause of the Alaska Constitution to require, for example, that there be a certified music teacher, vocational education teacher, art teacher, or librarian in each school. Such an approach is consistent with this Court's reading of the Molly Hootch decision, in which the Alaska Supreme Court recognized that "educational programs may well require special design to confront the divergent problems presented, [such that] a uniformity requirement

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<sup>34</sup> Former Commissioner Holloway testified persuasively on this topic, when she stated: "we've always had adequate money to teach kids to read, write and compute. And schools, that's their major responsibility. If we don't give kids the ability to read, write, and compute, if that toolkit isn't there and very proficient, we have virtually taken away from them the choices that are out there for them to make to enrich their lives and to be more economically viable. So, you know, I'm a basic skills gal. I think that every young person in this state has got to be proficient in reading, writing, and math." [Tr. 3397]

in the Alaska education system might well prove unworkable.” Hootch, 536 P.2d at 803.

11. A related issue on educational content is the topic of pre-kindergarten. Many witnesses for both the Plaintiffs and the State testified that pre-kindergarten programs can contribute to academic success by helping to make young children ready for formal education. Yet there appears to be no consensus as to the age to best apply “pre-kindergarten” programs, or whether they ought to be provided in the public schools or outside of the school system. Although there is considerable evidence that pre-kindergarten programs may be beneficial to children, it is not the Court’s role to make such policy determinations.

12. The Education Clause, on its face, requires that the State ~~“establish and maintain a system of public schools.”~~ At statehood, public schooling began after kindergarten. The State now provides a public school system available to children beginning at age five.<sup>35</sup> This Court does not read the Education Clause of the Alaska Constitution to accord to preschool age children the right to a public school education.

#### ***Assessments***

13. It is undisputed that the State has developed a comprehensive system to assess student proficiency in reading, writing, and math, and that it intends to also assess proficiency in science. The testimony of Les Morse, Director of Assessment and Accountability at EED, was particularly persuasive as to the careful attention to detail that has been invested by EED staff and many

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<sup>35</sup> AS 14.03.080(d).

educators throughout the state that led to the development and continued refinement of the State's assessment standards.

14. The Plaintiffs do not assert that the State's current assessment system fails to adequately or accurately assess proficiency in the subjects tested. See, e.g., Plaintiffs' Proposed Findings at 44-48.

15. While it may be that the State is required to exercise sufficient oversight over school districts to insure that each school accords to children meaningful exposure to each of the State's other content areas, this Court finds that formalized testing in each of those other content areas is not constitutionally required.

16. This Court finds that the State's assessment system meets its constitutional obligation with respect to this component of an adequate education ~~under the Education Clause.~~

***The Adequacy of the Funding***

17. With respect to the adequacy of the funding, as set forth above in this Court's *Findings of Fact*, this Court has found with respect to each of the Plaintiff school districts that the Plaintiffs failed to establish by a preponderance of the evidence that the Legislature has failed to accord the school districts sufficient funds with which to provide to their children adequate instruction on the State's content and performance standards.

18. This Court also finds that the Plaintiffs failed to establish by a preponderance of the evidence that the State of Alaska has underfunded

education in other parts of the state, or in the state as a whole, to such a degree so as to constitute a violation of the Education Clause.

19. The Plaintiffs assert that the achievement gap between Alaska Native students and other students is demonstrative of an underfunding of education. But this Court found persuasive not only the evidence regarding all of the various school districts that was submitted, but also the testimony of the State's experts and other witnesses on this issue. There are many parts of the state in which children are being accorded a meaningful opportunity to achieve proficiency on the State's performance standards and receive meaningful exposure to the State's other content standards. Although the achievement gap is a serious concern in this state, the Plaintiffs failed to establish by a preponderance of the evidence that additional funding to the school districts would reduce or remedy this gap.

20. In conducting their analyses of the sufficiency of educational funding in Alaska, the Plaintiffs and their experts have generally excluded federal or grant funding, and have asked this Court to evaluate the sufficiency of only state and local funds. But the Court concludes that all funding should be included in an analysis of the adequacy of Alaska's educational funding system.

21. The Alaska Constitution does not specify any source of funds that must be used by the Legislature to provide the system of public schools that is required under the Education Clause. The State is required to insure that education is adequately funded, but in so doing it may consider all sources of

funding, including private foundations, individual philanthropists, the federal government, or any number of combined sources.

22. At statehood, the State depended heavily on federal money for education, and several statutes demonstrated the intent of the new state to obtain as much federal money as possible.<sup>36</sup> In Molly Hootch, the Alaska Supreme Court held that to interpret the Education Clause to require a large expenditure of state money – in that case the cost of local secondary schools in each rural community -- “would have been considered preposterous” at the time of statehood.<sup>37</sup> It follows that the framers intended that the State should continue to receive and spend federal money in providing a system of public school funding.<sup>38</sup>

23. There is no evidence that the State has used federal funds in a manner inconsistent with federal law. The State has been found to have an equitable financing scheme under federal law, and there was no evidence that the federal Title funds have been used to supplant, instead of supplement, state or local funds.

24. The Plaintiffs have argued that REAAs are disadvantaged by Alaska’s system of education finance. However, the evidence in this case persuasively demonstrated that REAAs receive considerably more funding per student than the average city or borough. Moreover, in Mat-Su v. State, the Alaska Supreme Court held that the funding systems within the state do not need

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<sup>36</sup> AS 14.50.030-14.50.080.

<sup>37</sup> Hootch, 536 P.2d at 804.

<sup>38</sup> See Hoke County Bd. of Educ. v. State, 599 S. E. 2d 368, 395 (N.C. 2004) (trial court properly considered federal funding in adequacy determination).

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to be equivalent: "Given the differences in constitutional status between REAAs and boroughs and city districts, we hold that the legislative decision to exempt REAAs from the local contribution requirement, while requiring contributions from borough districts, was substantially related to the legislature's goal of ensuring an equitable level of educational opportunity across the state."<sup>39</sup> In addition, REAAs have the opportunity to become boroughs, and many have. That will change how the funding formula applies to them, but it will not change the fundamental fact that they contain small, rural schools and that effective methods of delivering education to such schools must be considered by local school districts – which the evidence demonstrated is already occurring in many districts throughout the state.

25. One of the Plaintiffs' experts, Dr. Nat Cole, testified that the state system of education is inadequate because state funding has not kept pace with inflation. But failure to keep up with inflation does not make a system constitutionally inadequate. This Court rejects the idea that the Education Clause requires that funding always be at the historical high-water mark and must be inflation-proofed. Funding can be higher in years of higher revenue without creating an obligation to keep funding at that level or to inflation-proof future education funding. The Education Clause requires only that education funding be adequate to provide a meaningful opportunity to meet the State's standards, not that it always be at 1988 levels. Second, the opinion that education throughout the state is inadequate because it is not at the 1988 level is inconsistent with the opinion of Plaintiffs' other experts, Dr. Mueller and Dr.

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<sup>39</sup> Matanuska-Susitna Bor. Sch. Dist. v. State, 931 P.2d 391, 400 (Alaska 1997).  
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Smith, who both opined that education in the state is definitely adequate in some places – even though funding it is no longer at the 1988 levels. [Tr. 743, 1248-49]

26. The Plaintiffs also criticize the present State education funding formula enacted by the Legislature in 1998, and instead favor the formula put into place in 1988. The Legislature currently allocates operational funding to districts through a formula that contains “adjustments” based on legislatively-selected factors, including school size, district cost factors, special needs, intensive instruction, and correspondence instruction.<sup>40</sup> The evidence presented indicated that the current formula was carefully considered and represents a rational approach to educational funding.

27. The Plaintiffs have asserted the existing formula is constitutionally deficient because it fails to adequately weight for at-risk students. The State’s operational funding formula (as distinct from specially designated state or federal grants) results in unrestricted funding that can be spent by the school district for any of its educational programs. Therefore, in assessing the constitutional adequacy of the formula, it should be considered globally, rather than separating out the factors that are contained within each part of the formula. When viewed from that perspective, the evidence persuasively demonstrated that Alaska’s formula provides more money where educational need is greater. Accordingly, the formula’s failure to expressly weight for at-risk students does not present a constitutional infirmity.

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<sup>40</sup> See AS 14.17.

28. The Plaintiffs also object to the present funding formula because it is based on "block" funding for "special needs" students. The Plaintiffs' expert, Dr. Cole, recommends a return to categorical funding that was used in the 1988 formula. Based on the evidence presented at trial, including the reasons for the change to block funding, the Court concludes that the State's formula for "block" funding of special educational needs at 20% is a rational method of allocation. [Tr. 2722-23]

29. Under the Education Clause, funding for a public education system is constitutionally inadequate only if it is proven that the existing resources are not sufficient to accord to children a meaningful opportunity to be educated.<sup>41</sup> Plaintiffs have failed to demonstrate that the Education Clause of the Alaska Constitution requires the State of Alaska to allocate more money to school districts. ~~The Court's conclusion does not imply that spending more~~ money at this time would not have an effect on specific educational outcomes, or for specific schools, classrooms, or students.<sup>42</sup> There may be, in particular, a benefit in specifically-targeted spending for incentives for education that could be beneficial. But based on the current level of spending, and the other evidence presented at trial, the Plaintiffs have failed to demonstrate that the State is constitutionally obligated to appropriate more money to local school districts for education at this time.

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<sup>41</sup> The Plaintiffs have not raised any equal protection claim in this litigation. The Plaintiffs' due process claim is addressed separately.

<sup>42</sup> It may be that the Legislature will need to accord to EED additional funding to insure that the school districts are meeting the State's duty to provide a constitutionally adequate education to Alaska's school children.

30. The Plaintiffs have failed to establish by a preponderance of the evidence that the existing funding formula or any of its components are constitutionally infirm. But this Court expresses absolutely no opinion as to whether, from a policy standpoint, there should be any adjustments to or replacement of the existing formula or any of its components. Whether the Legislature chooses to adjust or replace the funding formula, or any of the components of the funding system, are all appropriate policy determinations for the Legislature to address as it may deem warranted.

**Accountability and Oversight**

31. The extensive evidence in this case demonstrated that a considerable majority of the children in this state are being accorded a constitutionally adequate education. This is best demonstrated by the many districts in which a substantial majority of the children have achieved proficiency on the State's assessments, as well as the additional evidence the State presented from several non-Plaintiff school districts. And it is also clear that EED is providing substantial assistance and support to those school districts that seek out its services. EED is also exploring many educational strategies in an effort to increase the number of students in the state who attain proficiency.

32. The Court also finds that the concept of local control over the delivery of public education is deeply ingrained in state educational policy and the history of education in Alaska and elsewhere. In Tunley v. Municipality of

Anchorage Sch. Dist., for example, the Alaska Supreme Court included the following quotation:

Historically, Americans have considered schools to be an extension of the local community. Thus, although state legislatures possess plenary power over the educational system, local initiative with respect to education is so highly regarded that most states have delegated extensive authority over the actual administration of the schools to local institutions.<sup>43</sup>

33. Similarly, in Breese v. Smith, the Alaska Supreme Court quoted with approval the following United States Supreme Court observation:

Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint ... By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values.<sup>44</sup>

34. But Alaska's Constitution makes the Legislature -- not the local school districts -- ultimately responsible for maintaining Alaska's schools. Clearly, the Legislature has the authority to delegate that responsibility. And this Court has found the Legislature has provided the school districts with a constitutionally sufficient amount of funds to undertake that responsibility. But the State's responsibility does not end with adequate funding. If a school, despite adequate funding, is failing to accord a child with a constitutionally

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<sup>43</sup> Tunley v. Municipality of Anchorage Sch. Dist., 631 P.2d 67, 75 n.17 (Alaska 1981) (quoting Project, Education and the Law: State Interests and Individual Rights, 74 Mich. L. Rev. 1373, 1380 (1976); see also Milliken v. Bradley, 418 U.S. 717, 741-42 (1974) ("No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process.").

<sup>44</sup> Breese, 501 P.2d at 174 n.59 (quoting Epperson v. Arkansas, 393 U.S. 97, 104 (1968) (footnotes omitted and ellipses inserted by the Alaska Supreme Court)).

adequate education – such as failing to give that child a meaningful opportunity to acquire proficiency in the State's own performance standards – then the concept of local control must give way because that school is not being maintained as required by the Education Clause.

35. In many respects, EED has done a truly commendable job in improving education for Alaska's children. This Court has reviewed the testimony of all of the EED personnel, including the extensive deposition testimony that was submitted. Each person demonstrated a deep commitment toward improving education for all of Alaska's children. The depth of that commitment was perhaps most evident in the testimony of Roger Sampson, the current Commissioner of the Department of Education and Early Development.

36. The State has developed appropriate content and performance standards. ~~It has developed finely-tuned assessments to determine~~ each child's proficiency with respect to the performance standards, and widely disseminated those results. It has fully met its constitutional obligation to adequately fund education. But, having elected to delegate to school districts the primary responsibility for educating Alaska's school children, the State must also establish a system of adequate oversight and accountability of those districts. The State must also insure that its educational standards are being implemented at the local level so that all children within this state receive their constitutional entitlement to the opportunity for an adequate education. State v. Fairbanks North Star Borough, 736 P.2d 1140 (Alaska 1987).

37. This is not to indicate that each local school district is constitutionally precluded from having its own curriculum. In Molly Hootch, the Alaska Supreme Court expressly sanctioned the use of different educational programs throughout the state. 536 P.2d at 803. The Supreme Court recognized that there is a particular benefit in Alaska, given its diversity of people, to accord to each school district the ability to use a curriculum that will be responsive to the cultural and other needs of each community. Id. And yet the definition of a basic education in Alaska, particularly after the passage of No Child Left Behind, must encompass providing to each student a meaningful opportunity to learn to read and write in English, and to perform basic math computations.

38. The Education Clause does not require the State to “take over” these troubled school districts or fire key personnel. Indeed, evidence introduced at trial indicated that such approaches may well be counterproductive. Commissioner Sampson’s suggestion – that the Legislature look to according EED more authority to direct a school district’s resource allocation into the classroom – may result in considerably greater success. The exact nature of those additional efforts should be for the State, in the first instance, to determine. But this Court finds that the efforts taken as of trial, particularly with respect to the Yupiit School District, are constitutionally inadequate. While the Court recognizes that the State had taken some steps in the right direction in Yupiit as of that date, the State has not satisfied its constitutional obligation to the children in that district to accord them an adequate education. In short, the schools in Yupiit are not being adequately maintained as required by Alaska’s Constitution.

The evidence at trial demonstrates that Yupiit does not have an educational plan and a well-grounded curriculum in use in its classrooms that together aim to insure that each child is accorded a meaningful opportunity to achieve proficiency on the State's performance standards and meaningful exposure to the State's other content standards.

39. There is "no silver bullet" in education, and as the evidence regarding Bering Strait School District clearly demonstrated, there is a benefit in experimentation and in according to local school districts the opportunity to direct their funds in the manner that they believe will best meet the needs of students within their district, particularly given the great diversity within this state. But the Alaska Constitution sets some limits. If generations of children within a school district are failing to achieve proficiency, if a school or a district has not adopted an appropriate curriculum to teach language arts and math that is aligned with the State's performance standards, if basic learning is not taking place for a substantial majority of a school's children, then the Constitution places the obligation upon the Legislature to insure that the State is directing its best efforts to remedy the situation. Here, the evidence has persuasively demonstrated that more funding is not the answer. For the State to fail to take a considerably more directive role in the face of chronically poor performance, at least for the children in Yupiit, amounts to an impermissible "legislative abdication" of the State's constitutional responsibility to maintain public schools in this state. Fairbanks, 736 P.2d at 1144.

40. Based on the evidence presented at trial, it would appear likely that the majority -- perhaps the substantial majority -- of school districts within this state are meeting the State's constitutional obligation to provide an adequate education to Alaska's children. The State's accountability standards, in which each school's and district's testing results are widely disseminated, together with EED's support services and assistance, appear to provide sufficient standards and oversight for the majority of districts, at least from a constitutional perspective.

41. In order to achieve compliance with the Education Clause's requirement to maintain a system of public schools, the State must do, at a minimum, two things. First, it must establish clear standards for school districts that are necessary for the district to retain full local control. These standards must focus on whether the school district is fulfilling the State's constitutional obligation to provide an education to the children within the district. In short -- the State must insure that each school district has a demonstrated plan to provide children a meaningful opportunity to achieve proficiency in the State's performance standards, and meaningful exposure on the remaining content standards -- and insure that the district's plan is fully implemented and actually in use in the district's classrooms. Second, the State must exercise considerably more oversight and provide considerably more assistance and direction to those schools that are identified as failing to meet the State's constitutional obligation, in a concerted effort to remedy the situation.

42. It is the State, at this juncture, that should have the first opportunity to address how best to achieve these two requirements. In determining which districts require greater oversight, for example, it is the State that should determine how to make this assessment, and the factors that would guide that determination. These issues are clearly more appropriate for education policy-makers to address in the first instance, rather than this Court.

43. At the Constitutional Convention, Delegate Armstrong, who served on the committee that drafted the Education Clause, provided general remarks about the committee's reason for proposing that clause: "We had to recognize that the public schools were our responsibility and that it was our duty to provide for all children of the state in matters of education."<sup>45</sup>

44. Although this Court had the privilege to hear from many concerned educators and parents throughout the state during the course of this proceeding, perhaps Dr. Davis summarized this issue the best: "as a state, we need to begin to recognize [that] if we have profound learning challenges, students are testing consistently, generation after generation as performing less well than the majority of the population, then ... it's not enough just to say, 'well, we gave them ... equitable resources.'" [Tr. 204] This Court has found that the State has accorded constitutionally adequate funding for education. But the Education Clause requires that the State must provide considerably more than funding to fulfill its constitutional obligation to maintain a public school system in this state, and particularly its underperforming schools.

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<sup>45</sup> Available at: <http://www.law.state.ak.us/doclibrary/conconv/48.html>

45. Each of the Plaintiff school boards, and particularly the Yupiit School Board, is to be commended for opting to become a Plaintiff in this action. In doing so, each was subjected to the intensive scrutiny that is so often a component of the legal process. The Yupiit School Board President persuasively expressed his deep concern about the low achievement levels of the students in his district. He testified that he welcomes the State's assistance to help the district's children. And this Court was also persuaded that the teachers in Yupiit are enthusiastic and motivated to teach the children in that district to the best of their ability. Likewise, many witnesses -- for both the Plaintiffs and the State -- demonstrated a heartfelt motivation to improve the quality of education for Alaska's school children. Ultimately, the Alaska Constitution makes the State responsible for according all of the children in Alaska the opportunity to learn. To date, it has not fully met that responsibility.

46. At this juncture, this Court recognizes that the legislative and executive branches of government, and not the Court, are in a considerably better position to address these issues. So as to accord the State an opportunity to do so, this decision is being stayed for a period of one year.

***II. Substantive due process***

47. The Plaintiffs have also asserted several substantive due process arguments. With respect to their funding claims, for the same reasons set forth above with regard to the validity of the State's funding under the Education Clause, the Plaintiffs have failed to demonstrate that the funding

formula has "no rational basis." Griswold v. Homer, 34 P.3d 1280, 1284 (Alaska 2001). Accordingly, those claims are dismissed.

48. The Plaintiffs have also asserted that the high school graduation exam violates their rights to due process. In this regard, they assert that education is a fundamental right, and thus the high school diploma is also a fundamental right. They then assert that the State has failed to present a compelling reason before depriving students of their right to receive a diploma. [Plaintiffs' Proposed Findings at 139]

49. The State acknowledges that a high school diploma is a property interest, and thereby entitled to due process protection. But the State asserts that the evidence at trial supports a conclusion that all students in the state are accorded an adequate opportunity to learn the subject matter on the exit exam. [State's Proposed Findings at 78, ¶194; 114, ¶189]

50. This Court need not determine whether education is a fundamental right to resolve this issue, because an individual does not have a fundamental right to receive a high school diploma. Thus, the heightened standard of a substantive due process analysis advocated by the Plaintiffs is inapplicable.

51. And yet the State is required to proceed with "fundamental fairness" when taking action that could deprive a person of a property interest such as a high school diploma. This Court has found that in some areas of the state, children are not being accorded a meaningful opportunity to acquire

proficiency in the very material that is tested on the exit exam.<sup>46</sup> The State is to be commended for its careful efforts in the development and testing of the exit exam, and for according substantial notice of the exam prior to its effective date. Yet given the State's constitutional shortcomings in addressing the educational needs of children at all schools in the state – and specifically as has been found with respect to the three Yupiit schools – it is fundamentally unfair to those children to condition the receipt of a high school diploma on the test at this time. Cf. Debra P. v. Turlington, 644 F.2d 397 (5<sup>th</sup> Cir. 1981).

52. Thus, for those children in Yupiit, and at any other school that is identified by the State as not receiving an adequate education as defined herein, (or identified by this Court if necessary in future proceedings), this Court finds that the High School Graduation Qualifying Exam can not be used to preclude a ~~child from receiving a high school diploma. This restriction shall remain in effect~~ until the State demonstrates to this Court that it has undertaken sufficient oversight and remedial efforts at these schools such that a constitutionally adequate educational opportunity is being provided.

53. In order to give the State the opportunity to address this concern in the first instance, this component of this Court's order is also stayed for a period of one year. During that time, the State may continue to administer the HSGQE throughout the state, and the status of any high school diplomas for

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<sup>46</sup> The State has asserted that the testimony that courses in English and math are taught at Yupiit demonstrates that the children are receiving an adequate education on the exam's subject matter. But as the State quite capably demonstrated with respect to Drs. Mueller and Smith's curriculum audit, the fact that a listed course is taught or not taught is not necessarily demonstrative of the educational opportunity actually being provided to students. [See State's Proposed Findings at 144]  
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students at constitutionally inadequate schools can be addressed as needed at further proceedings. Of relevance could be the extent of any remedial services offered to students in the interim who have not yet passed the exam.

### **CONCLUSION**

The Education Clause of Alaska's Constitution provides that "The legislature shall by general law establish and maintain a system of public schools open to all children of the State."

For the reasons set forth in this decision, this Court finds that the State of Alaska's funding of public education fully comports with the Education Clause. The Plaintiffs' claims with respect to inadequate funding are, accordingly, dismissed.

However, this Court has found that the State has violated the Education Clause in one significant respect. Although the State may delegate its responsibility to maintain public schools to local school districts, as it has done, it has failed to exercise adequate supervision and oversight. Specifically, it has failed to identify those schools within the state that are not according to children a meaningful opportunity to acquire proficiency in the subject areas tested by the State and meaningful exposure to the other content areas in the State's educational standards. And as to those schools that are deficient in that regard, the State has failed to provide adequate supervision and oversight in a concerted effort to remedy that situation.

This Court has also found that because the State has failed to meet this component of its constitutional responsibility to maintain a public school system, the due process rights of children in those underperforming schools are violated when the State conditions the receipt of a high school diploma on successful passage of the High School Graduation Qualifying Exam. It is fundamentally unfair for the State to hold students accountable for failing this exam when some students in this state have not been accorded a meaningful opportunity to learn the material on the exam – an opportunity that the State is constitutionally obligated to provide to them.

ORDER

IT IS ORDERED that the effective date of this decision shall be stayed for a period of one year until June 21, 2008 so as to accord to the State the opportunity to address the issues presented herein prior to any further court proceedings.

DATED this 21<sup>st</sup> day of June, 2007.

Sharon Gleason  
Sharon Gleason  
Judge of the Superior Court

I certify that 6-21-07 a copy  
of the above was mailed/faxed to each of the  
following at their addresses of record  
[Signature]  
Judicial Assistant

handed to:

At  
Sato Kain  
Middleton  
Trickey

**Alaska's Public School  
Funding Formula:**

**A Report to the Alaska  
State Legislature**



January 15, 2001

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**Shirley J. Holloway, Ph.D.  
Commissioner, Department of Education & Early Development**



## Public School Funding Formula *Executive Summary*

The passage of Senate Bill 36, Ch. 83, SLA 1998, carried with it certain reporting requirements for the Department of Education & Early Development to the 22nd legislature by January 15, 2001. Following is a brief summary of each of the three required reports.

### **Tab 1 District Cost Factors**

#### **Background**

This report addresses the requirement of: SB 36 section 41. TRANSITION: PROPOSED DISTRICT COST FACTORS. The Department of Education shall submit the initial proposed district cost factors, required under AS 14.17.460(b), enacted in sec. 2 of this Act, to the Alaska State Legislature by January 15, 2001.

Legislation requires the department to monitor district cost factors and submit a report to the legislature every other year beginning January 15, 2001. Cost factors are specific to each district and adjust funding to account for regional cost differences between districts. The lowest factor is 1.000 and the highest is 1.736.

Current district cost factors were adopted by the legislature and became effective July 1, 1998. These factors were based on the best data available at the time as provided by the McDowell 1998 Alaska Cost Study. To recalculate current district cost factors the department again utilized the 1998 McDowell Alaska School Operating Cost Study methodology.

#### **Findings**

The department utilized the 1998 McDowell Alaska Cost Study methodology to calculate updated district cost factors that created results that were not defensible or supported by underlying data. The department contracted with the McDowell group to verify the accuracy of the calculation.

The McDowell Group reviewed the department's calculations and found that the results were not meaningful. The McDowell Group determined that the 1998 methodology is not usable to update district cost factors for a number of reasons as outlined in their report included under Tab 1.

#### **Recommendation**

The department recommends that district cost factors remain at their current levels as designated in statute under AS 14.17.460 because there is not any empirical data to support changing the district cost factors at this time. The



## Public School Funding Formula *Executive Summary*

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department also recommends that a new district cost model be developed to properly account for cost differences between districts on an ongoing basis.

### Tab 2 Comparison of Old to New Funding Formula

#### **Background**

This report addresses the requirement of: SB 36 Sec. 47. REQUIRED REPORT. The Department of Education shall compare the use of per school funding required under this Act to the use of funding communities required in AS 14.17 before the effective date of the Act and submit a report to the Alaska State Legislature by January 15, 2001.

This required report compares the per school funding under SB 36 to the previous funding formula. The old formula uses student enrollment grouped by community and the new formula uses enrollment grouped by school to determine basic need. This report compares adjustments between the old and new funding formulas such as size, special needs and supplemental funding floor.

The 1998 McDowell Alaska Cost Study review panel did not suggest that any school districts were over funded under the previous funding formula, rather that some districts appeared to be under funded under the new school funding model. The McDowell group report suggested that no district lose money. The legislature adopted as a component of SB36 the supplemental funding floor that erodes over time.

#### **Findings**

The supplemental funding floor is subject to erosion as school district enrollments increase. As district enrollments increase these additional students are only funded at 60% of entitlement. In the department's analysis of the district cost factors and comparing the old and new funding formula, there is no data to support the erosion of the supplemental funding floor that penalizes districts that have increased enrollment.

The previous funding formula had a hold harmless provision for school districts that experienced a substantial decrease in student enrollment from one year to the next. The current funding formula has no such provision and school districts immediately absorb the reduction in revenue due to decreased enrollment.



## Public School Funding Formula *Executive Summary*

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### **Recommendations**

The department recommends the repeal of AS 14.17.490(d), erosion of the supplemental funding floor.

The department recommends that AS 14.17 be amended to include a hold harmless provision for school districts that experience a decrease in student enrollment of 10% or more from one year to the next.

### **Tab 3 Educational Adequacy**

#### **Background**

This report addresses the requirement of: SB 36 Letter of Intent. "It is the intent of the Legislature to direct the Department of Education to include in the required report of Section 47 a thorough review of educational adequacy in the schools of Alaska, paying particular attention to differences in costs of school operations between communities, differences in costs of school operations depending on their size, and the particular effects and impacts described in AS 14.17.490 section (d), and to report to the Legislature no later than January 15, 2001."

The department brought together a broad based group of Alaskan's to define educational adequacy and the underlying factors. The group focused primarily on the impact of inflation on education funding.

Based on direction from the adequacy group, the department examined the changes that have occurred in education funding over the past ten years and the impacts of those changes on school districts. The effects of inflation over the past ten years are identified in the report. The department found that a significant effect of inflation is that school districts are limited in their ability to recruit and retain teachers.

#### **Findings**

From FY90 to FY00 inflation has increased approximately 30% but the public school funding program was increased only 5% during this time.

From FY90 to FY00 enrollment increased 25% and the legislature fully funded the increase.



## Public School Funding Formula *Executive Summary*

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School districts in Alaska are having a difficult time recruiting and retaining teachers due to the competitiveness of teacher salaries in other states and the vast number of incentives being afforded to new hires in other states.

### **Recommendations**

Based on the adequacy group's work and the department's analysis, the department recommends that changes be made to the public school funding formula to recoup losses due to inflation and to provide for future inflationary adjustments. These recommendations and others included in Tab 1 and 2 will be forwarded to the governor's education funding task force. The task force recommendations are due to the governor and the State Board of Education & Early Development on February 1, 2001.

# TAB 1

## District Cost Factors



## Public School Funding Formula *District Cost Factors*

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### Introduction

Alaska's public school funding formula includes a provision to adjust funding for each district for regional cost differences; this adjustment is contained within district cost factors that are in AS 14.17.460. Each district is assigned a factor by which funding is increased to compensate for cost differences.

This report responds to the direction in AS 14.17.460 (b) District cost factors, that the department shall monitor the cost factors established under (a) of this section and shall prepare and submit to the legislature by January 15 of every other fiscal year proposed district cost factors.

The current district cost factors in statute were arrived at as part of the 1998 Alaska School Operating Cost Study and adopted beginning fiscal year 1999. Previously, cost factors were last updated in 1988.

The department has reviewed the 1998 Alaska School Operating Cost Study in detail and compiled current data for analysis in the same manner as the study utilized. The department has calculated cost factors with current FY99 data based on the study's methodology and has reached conclusions and makes recommendations based on the outcome of our calculations and evaluation.



## Public School Funding Formula *District Cost Factors*

The department has contracted with the authors of the 1998 Alaska School Operating Cost Study, The McDowell Group, to:

- Review, comment, and make recommendations to the department's current recalculation of district cost factors derived from using the Alaska School Operating Cost Study methodology.
- Review, comment, and make recommendations for any changes to current district cost factors.
- Review, comment, and make recommendations for any changes to the cost factor methodology.

The McDowell Group's report is included after this report.

### **Summary of the 1998 Alaska School Operating Cost Study Methodology and Calculations**

The 1998 Alaska School Operating Cost Study presents the calculation for determining cost factors on page 18 of that report. The district cost factors are calculated by dividing each district's estimated average basic need per student by the statewide estimated average basic need per student. Basic need is the amount of required funding the foundation formula assigns to each district.

The 1998 Alaska School Operating Cost Study was able to use basic need in calculating cost factors because basic need revenues are essentially what a district has available to spend, therefore basic need approximates expenditures.



## Public School Funding Formula *District Cost Factors*

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The 1998 Alaska School Operating Cost Study investigated the issue of basic need and cost factors in two pieces, the instructional component and the district level component (non-personal services and administration).

The development of the instructional component of basic need and cost factors used a team of education experts and statistical modeling to develop a school size table that is in AS 14.17.450. The school size table was developed to account for instructional operating costs that are influenced by school size. The instructional portion of a district's basic need is dependent on the multipliers in the table as applied to each school in the district.

The study's review of the district expenditures used an analysis of 1996 audited expenditure reports from all 53 school districts. The study pursues a rigorous examination of district level expenditures. The study examined district level costs by measuring each district's expenditures per student and also repeats the analysis by examining a "market basket," or subset, of expenditures per student. The market basket of expenditures included travel, supplies, utilities, insurance, and communication expenditures. The report concludes that no consistent standard could be applied for computing a relationship between student enrollment and district level costs, and that the short run solution is to compensate districts based on their actual costs. Therefore, the final methodology resorted to using basic need in the calculation for cost factors rather than expenditure data.

The estimated basic need used in the study to determine cost factors was arrived at by adjusting each district's original basic need by changes developed in the school



## Public School Funding Formula *District Cost Factors*

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table. Because a conclusion relating to district costs was not achieved, no changes were suggested for these non-personal services and administrative costs. The cost factors in AS 14.17.460 represent each district's estimated average basic need per student divided by the statewide estimated average basic need per student.

### **Results of using FY99 Data to Calculate District Cost Factors following the McDowell 1998 Alaska School Operating Cost Study**

For the current period, actual FY99 student data and actual basic need dollars were used to recalculate cost factors as presented on page 18 of the 1998 Alaska School Operating Cost Study.

Because the instructional portion of basic need is set in statute with the school size table and because there is not a mechanism to adjust basic need for district costs, one would not expect districts' basic need dollars to significantly change from one year to the next unless there was a drastic change in a district's school size configuration. Correspondingly, if basic need remains stable, than the cost factors derived from dividing each district's basic need per student by the statewide basic need per student would not be expected to change.

The results obtained from recalculating cost factors using FY99 data are presented in appendix A. The results do not provide a basis, or insight, to recommend changes to existing cost factors. The results do however point to several areas of concern in the current cost factor methodology.



## Public School Funding Formula *District Cost Factors*

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The current cost study methodology does not account for the changes that SB 36 made to the foundation formula for calculating correspondence study dollars or special education intensive dollars. The results of using FY99 data with the cost study methodology shows that those schools with correspondence students have an elevated cost factor. For example, Galena's cost factor is set in statute at 1.348 but using the cost study methodology with FY99 correspondence dollars assigns Galena a cost factor of 6.631. The increases the methodology calculates for districts with correspondence students are not warranted by increased costs. Additionally, because the formula simply divides each district's average basic need per student by the statewide average basic need per student, the impacts affecting districts with correspondence studies are also carried into the statewide average.

By using a calculation based on adjusted average daily attendance and average basic need to calculate cost factors any imperfections in the adjustment to average daily attendance or in the determination of basic need, are incorporated into district cost factors. Further, without identifying the underlying elements of true cost differences there is not a process to evaluate outcomes.

### **Conclusion**

The 1998 Alaska School Operating Cost Study reported that compensating districts for actual district costs incurred was an unsatisfactory long-term solution. Based on our review of the methodology, and the outcome of calculations using FY99 data, we agree with the study's conclusion that the current methodology is unsatisfactory.



## Public School Funding Formula *District Cost Factors*

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We recommend that a request-for-proposal be developed that requires identification of the underlying elements affecting school costs and determines a methodology for measuring those underlying elements. This will improve our cost factor methodology from that of compensating districts for current basic need to an improved method of allocating funding based on differences in applicable costs.

Consideration should be given to the elements that contribute to costs in school districts. The investigation should evaluate whether the previously studied elements of travel, supplies, utilities, insurance, and communication correctly identify cost elements in districts, or whether other items should be added, or if different factors driving school district costs are applicable. Once the underlying elements are identified, a measurement tool applicable to each element should be identified.

The results obtained from recalculating cost factors using FY99 data under the 1998 cost study methodology do not provide a basis to recommend changes to existing cost factors because the formula does not adequately evaluate for cost differences in district level costs and the methodology does not adequately account for changes in the foundation formula after SB 36.

### **Recommendation**

The department recommends that district cost factors remain at their current levels as designated in statute under AS 14.17.460 because there is not any empirical data to support changing the district cost factors at this time. The department also



## Public School Funding Formula *District Cost Factors*

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recommends that a new district cost model be developed to properly account for cost differences between districts on an ongoing basis.

FY99 Computatation of District Cost Factors

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
School District	FY99	FY99	FY99	FY99	Impact of School Level Revisions	Weighted Impact of School & District Level Revisions	Current (FY 99) Basic Need	Revised Basic Need	Current (FY 99)		District Cost Factor
	Instructional Level Expenditures	District Level Expenditures	School Level Expenditures	District Level Expenditures					Basic Need Per Student	Unadjusted Multiplier	
<b>Total</b>	<b>622,823,619</b>	<b>338,506,511</b>	<b>65%</b>	<b>35%</b>			<b>813,867,788</b>		<b>5,516</b>		
Alaska Gateway	2,997,683	2,048,003	59%	41%			4,977,441		6,468	1.173	1.296
Aleutian Region	492,197	546,358	47%	53%			975,111		8,208	1.488	1.644
Aleutians East	2,302,187	2,676,885	46%	54%			3,670,346		6,728	1.220	1.348
Anchorage	209,452,072	76,372,647	73%	27%			238,251,043		4,991	0.905	1.000
Annette Island	2,489,601	1,724,851	59%	41%			2,448,946		4,939	0.895	1.000
Bering Strait	11,706,858	12,267,042	49%	51%			20,512,192		7,266	1.317	1.455
Bristol Bay	1,632,441	1,265,562	56%	44%			2,751,026		6,098	1.105	1.221
Chatham	1,664,365	1,316,342	56%	44%			2,688,735		5,497	0.996	1.101
Chugach	839,278	859,828	49%	51%			1,234,166		7,866	1.426	1.576
Copper River	3,050,705	2,516,105	53%	47%			5,624,665		6,186	1.121	1.239
Cordova	2,459,543	1,757,664	58%	42%			3,372,679		5,274	0.956	1.056
Craig	1,837,411	1,260,688	59%	41%			2,866,823		4,986	0.904	1.000
Delta Greely	3,930,540	3,063,337	56%	44%			6,603,913		6,323	1.146	1.266
Denali	2,077,774	1,803,864	54%	46%			3,510,658		6,243	1.132	1.251
Dillingham	3,531,431	1,966,385	64%	36%			4,204,216		6,042	1.095	1.210
Fairbanks	72,876,411	32,879,603	69%	31%			88,576,188		5,214	0.945	1.044
Galena	3,720,080	9,516,538	28%	72%			11,747,583		33,105	6.001	6.631
Haines	2,121,521	1,347,464	61%	39%			2,873,678		4,949	0.897	1.000
Hoonah	1,634,172	1,444,138	53%	47%			1,855,937		5,327	0.966	1.067
Hydaburg	419,259	568,515	42%	58%			978,223		5,235	0.949	1.049
Iditarod	2,976,552	4,075,269	42%	58%			5,240,176		7,825	1.419	1.568
Juneau	26,149,536	9,738,260	73%	27%			30,632,003		5,021	0.910	1.006
Kake	917,143	1,133,529	45%	55%			1,450,472		4,982	0.903	1.000
Kashunamiut	1,409,301	1,533,516	48%	52%			2,751,775		6,811	1.235	1.365
Kenai	48,259,961	24,636,506	66%	34%			59,675,398		4,859	0.881	1.000
Ketchikan	11,276,914	6,223,865	64%	36%			14,774,370		4,887	0.886	1.000
Klawock	1,269,410	931,150	58%	42%			1,537,191		5,055	0.916	1.012
Kodiak	14,370,291	8,486,571	63%	37%			17,811,243		5,325	0.965	1.066
Kuspuk	3,523,450	3,125,405	53%	47%			5,531,642		6,878	1.247	1.378
Lake & Peninsula	4,087,174	4,169,360	50%	50%			7,378,871		7,369	1.336	1.476
Lower Kuskokwim	25,163,924	18,855,045	57%	43%			36,670,132		7,138	1.294	1.430
Lower Yukon	11,255,759	8,504,546	57%	43%			19,427,864		6,840	1.240	1.370
Matanuska	61,906,788	22,150,470	74%	26%			70,235,033		5,158	0.935	1.033
Nenana	1,094,922	1,525,356	42%	58%			2,220,939		9,389	1.702	1.881
Nome	4,025,758	2,726,728	60%	40%			5,734,040		6,258	1.134	1.253
North Slope	20,020,075	19,098,608	51%	49%			19,700,591		7,132	1.293	1.429
Northwest Arctic	12,323,886	11,813,417	51%	49%			21,898,559		7,381	1.338	1.478
Pelican	276,916	348,793	44%	56%			338,328		6,099	1.106	1.222
Petersburg	3,176,667	1,957,271	62%	38%			4,708,300		4,850	0.879	1.000
Pribilof	885,092	1,236,683	42%	58%			1,816,576		6,783	1.230	1.359
Sitka	8,038,682	3,207,312	71%	29%			9,500,317		4,958	0.899	1.000
Skagway	668,697	754,929	47%	53%			1,135,902		5,465	0.991	1.095
Southeast Island	1,794,504	1,632,270	52%	48%			2,933,015		5,440	0.986	1.090
Southwest Region	5,764,965	4,143,933	58%	42%			8,643,414		6,774	1.228	1.357
St. Mary's	688,727	703,215	49%	51%			1,355,439		6,388	1.158	1.280
Tanana	540,615	1,235,715	30%	70%			1,230,895		7,128	1.292	1.428
Unalaska	2,063,788	1,720,125	55%	45%			2,924,426		5,926	1.074	1.187
Valdez	4,907,866	3,000,547	62%	38%			5,608,590		5,289	0.959	1.060
Wrangell	2,325,866	1,426,328	62%	38%			3,264,842		4,815	0.873	1.000
Yakatut	1,025,300	916,127	53%	47%			1,345,234		5,095	0.924	1.021
Yukon Flats	2,959,179	3,362,200	47%	53%			5,077,399		7,941	1.440	1.591
Yukon Koyukuk	4,125,363	3,898,453	51%	49%			6,917,970		7,225	1.310	1.448
Yupit	2,314,999	3,013,190	43%	57%			4,673,273		7,095	1.286	1.421

Notes to columns:

- Columns (1) and (2) are from 1999 school district audited financial statements
- Column (1), The term "Instructional Level Costs," includes aggregated costs for instructional personnel. This is also referred to as "School Level Costs," in the McDowell report
- Columns (3), (6), and (8) are represented on the spreadsheet to show comparison to the 1998 study calculation, but these are not used in FY99 because there were no changes in school or district level components contained in the instructional size table after the 1998 study changes, therefore actual basic need is used for FY99.
- Column (7) current basic need is taken from the FY99 foundation calculation
- Column (9) per student basic need is determined by dividing column (7) by the size-adjusted student count in each district.

# **ALASKA SCHOOL OPERATING COST STUDY**

## **REVIEW OF CALCULATED COST FACTORS**

**PREPARED FOR:**  
**Alaska Department of Education  
and Early Development**  
801 WEST 10<sup>TH</sup> STREET  
JUNEAU ALASKA, 99801

**January 2001**

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**PREPARED BY:**  
  
**Juneau • Anchorage**

**January 2001**

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## Executive Summary

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The Alaska Department of Education and Early Development retained the McDowell Group to review the 1999 updates to the District Cost Factors. We have examined the new calculations, the underlying database and assumptions, and have discussed changes in the education environment with Department representatives.

Our recommendations are as follows:

- 1 The methodology used to adjust Average Daily Membership (ADM) for the impact of school size is sound and amenable to update. This methodology is based on an empirical analysis of school level (instructional) costs. The Department should use recalculated ADM's using the most recent census in their revised calculation of Basic Need.
2. The methodology used to calculate District Cost Factors (DCF's) is not amenable to update for a number of reasons discussed in this report. We find the re-calculated results to not be meaningful. We recommend that the Department use the 1998 factors for the revised calculation of Basic Need.
- 3 We reiterate our recommendation in the 1998 *Alaska School Operating Cost Study* that further study is required for the district level costs. On the other hand, the standards for school level costs remain valid today. Readers are reminded that the District Cost Factor is a single number resulting from the blending in two costs – school level (instructional) costs and district level (administration and non-personal services) costs. The methodology selected in that report to allocate district level costs was simply a first step in transitioning the State of Alaska toward using an empirical basis for identifying actual school cost. Because school districts have greater discretion in controlling non-personnel and administrative costs, a methodology that develops standards or goals and directs funding in accordance with achieving the standards/goals may be a preferable option.

## Statement of the Situation

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In early 1998, the McDowell Group prepared the *Alaska School Operating Cost Study* for the State of Alaska Legislative Budget and Audit Committee. The purpose of the study was to determine adjustment factors that compensate for the impact of school size and geographical location on school operating costs. These factors were incorporated into the Public School Funding Formula.

It is important to stress that this study dealt with only one piece – operating costs – of a large and complex puzzle termed the School Foundation Formula. It was not intended to determine the cost of basic educational (Basic Need), but only how to allocate a portion of Basic Need (i.e., certain school operating costs) as defined by legislative appropriation. Also, Basic Need is only a starting point for public school funding; many adjustments are made for local contributions, federal impact aid, special needs, and other factors. Since the report was published, additional legislation has been enacted which has “adjusted” the District Cost Factors; all of these adjustments have been determined outside of the study analysis.

In our report, we cautioned the Committee that this was an important step, but only a first step in the process of transforming the funding process into one that has a scientific and empirical basis. Previous to 1998, District Cost Factors were based primarily on outdated (1985) household market basket costs unrelated to the cost of operating schools. A major advance of the Alaska School Operating Cost Study was, for the first time since statehood, to base District Cost Factors on what it cost to actually operate schools. The priority focus of the study effort was placed on the most significant part of operating costs, namely school level or instructional costs accounting for at least 70% of the total. The second major advance was to base school level (instructional) costs on standards for staffing schools of various sizes. The result was a sound defensible means of allocating instructional costs consistent from district to district that allows for updating based on changes in ADM.

However, such a standard was not possible for district level costs and the solution was an imperfect one that now prevents updating of the district level cost component of the DCF. Instead of a uniform standard like that calculated for school size, districts were simply allocated district level costs based on each district’s actual expenditures per student in FY 1996, the most recent year available at the time of the study. As a result of this acknowledge shortcoming, we recommended that the Committee implement a transition period to evaluate if adjustments are needed, and put further work into understanding the non-personnel and administrative costs, research that eventually could lead to standards for district level costs.

The Alaska Department of Education and Early Development is now in the process of recalculating the cost factors using 1999 data. Several issues and concerns about the District Cost Factors have emerged in this work. The McDowell Group views this situation as an excellent opportunity to review the assumptions, strengths and limitations of our earlier study.

## ***Review of District Level Cost Factors***

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To accomplish this review, the McDowell Group examined the worksheets used to recalculate the District Cost Factors (DCF's), as well as the underlying data used in the calculation. We noted that several adjustments needed to be made to audited financial statement information, consistent with the 1998 study. We also examined the additional data manipulation required to account for the increased roles of correspondence study and accounting transfers.

The purpose of DCF's is to account for wide variations in district level costs depending on geographic location. For example, remote districts with several small schools may pay eight times as much per student for heating oils as does a large urban district, even though the shelf price for oil is only two times as high. Non-personal services and administrative costs were combined into the district level cost pool for simplification, although it is clear that these costs have unique cost drivers. The use of actual expenditures had the effect of taking into account all of each district's unique geographic variables such as climate, insulation of buildings, utility and fuel costs, and so forth, including each district's local policies that affect spending. The disadvantage of this method is the absence of standards that resulted in compensation of districts for their current financial management practices – whatever they may be.

The McDowell Group report found that data limitations precluded the determination of a consistent standard for these costs across school districts. Therefore, a simple methodology of comparing actual per-student spending on non-personnel and administrative costs by each school district to the State average was employed. This methodology is far less rigorous than that used to account for variations in school level cost, but it was considered reasonable insofar as district level costs are comparatively small. However, district level costs are often most significant in smaller, multi-site rural districts where a larger portion of the total budget must be allocated to non-personal services out of necessity. As a result, the 70/30 rule (that was neither a part of the 1998 study nor a recommendation of it), forces many districts to skimp on necessary non-personal services costs or seek an exemption. While the intent of the rule is commendable - to address administrative costs and to encourage maximizing the money spent on instruction - its effects are impractical for many smaller districts.

The 1998 *Alaska School Operating Cost Study* presents the computation of DCF's in Table VII on page 18 of the report. In response to a request by the Legislative Budget & Audit Committee, a single adjustment factor was calculated blending two components – school level costs and district level costs. DCF's are therefore calculated by dividing each district's estimated Basic Need per student by the statewide estimated Basic Need per student (Basic Need was used as these revenues are a good proxy for district expenditures).

This methodology is simple and represents a reasonable first step in accounting for district cost differences. It also, unfortunately, contains several features that make their continued use problematic:

The methodology's basis accepts 1996 expenditure patterns as reflective of a district's needs and drives future spending to approximate and/or exceed this baseline. This basis was largely driven by the state of the database at the time the study was conducted. Financial statement expenditure data was considered to have the greatest accuracy, although several adjustments were made to the audited numbers for several districts in an attempt to level the comparison.

The net result is to accept that the 1996 expenditures for each district are reflective of their need, rather than alternative methods of independently assessing the need or developing a standard for cost. This is a reasonable method for a "point in time" analysis but is clearly less preferable to the other two alternatives in future years.

Assuming that districts essentially spend what they receive, this methodology reinforces itself, that is, it drives the district to the same level of spending each year. The lack of a standard means that districts that were relatively underfunded prior to 1998 continue to be hampered in their district level cost allocation. For districts with ample funding, there is little incentive to economize. Further, extraordinary events, such as unexpectedly high fuel costs, can have a devastating effect on districts with tight budgets. In fact, the major incentive, if this methodology remains in place, is for the districts to increase spending levels resulting in a higher average versus the state average. This is a driver the state may wish to avoid.

Some factors have increased in significance in school operational and accounting practices that were not considered by the 1998 study. Correspondence study has increased markedly at some school districts. This effect was not analyzed in the 1998 report and will skew results when included in the recalculation of cost factors.

For the present cost factor re-calculation, the Department has to contend with the increased practice of transfers. Again, this practice was not considered in the 1998 report and results may be skewed when factored into the recalculation.

Financial statements serve a number of purposes, but are not designed as cost research tools. While some accounts may be useful for comparisons, we are of the opinion that the analysis of cost drivers for district level costs may not be adequately served by financial statement data alone.

Recalculation using Fiscal Year 1999 data illustrates that the underlying methodology is an inappropriate driver and/or does not hold up to accounting/operational changes. Trial runs to re-calculate cost factors show two main effects. The first is that the large majority of district cost factors are unchanged (as predicted). The second is that a small number of districts have very large changes, primarily due to the operational or accounting changed that were not analyzed in the 1998 report. It is our recommendation that these changes to the DCF's should not be implemented without further study.

- **Improvements to financial and operational data initiated by the Alaska Department of Education cannot be incorporated into the current calculation.** The Department of Education has undertaken initiatives to ensure financial statement standardization and improve the quality of enrollment data using the Oasis database. These advances set the stage for better school cost data that can support more detailed cost study. Hence, a data quality limitation that existed at the time of the 1998 study has been removed. The improvement in data means that a new method for calculating administrative and non-personal services cost factors can be considered. Again, a new method should consider standards and the goals of the State of Alaska that underlie Alaska's huge fiscal commitment to education.
- **Variations in district level costs are diluted by school level costs in this calculation.** For the sake of "simplicity," two distinct cost pools - non-personnel and administrative costs - were combined and then further blended with instructional costs. What results is a very large - and complex - cost pool. It is entirely possible that the portfolio effect has damped critical variations, punishing some districts with higher than average costs and thereby rewarding others.

Waiver requests to the 70/30 instructional/non-instructional regulations have increased each year and are an indication that review of this methodology is required. As previously mentioned the 70/30 regulation was not part of the study and would not have been recommended by the study team if our opinion had been sought. It is our understanding that the original intent was to encourage districts to minimize administrative costs and allocate more money to instruction. This is certainly a commendable goal. However, most district level costs are non-personal services costs that provide the basic infrastructure of education, such as books, building utility, fuel and maintenance costs, insurance and the like. Smaller districts with inefficient buildings, severe climates and other factors out of their control are the most likely to have district level costs in excess of 30%, some in excess of 40%.

## ***Recommendations for Further Work***

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The 1998 McDowell Study put significant analysis into school level (instructional) costs, which comprise the major percentage of school operating costs. This analysis produced a methodology that can be updated yearly with the assurance of providing meaningful allocations.

As stated in the 1998 report, the State of Alaska should continue to improve its Public School Funding Formula and engage a similar quantitative effort into district level costs. Though the magnitude of these costs is well below instructional costs, they comprise a value that is certainly significant and can impact many districts, especially those on the margin of adequate funding. Data collection and standardization has apparently improved to the point that such a study will produce meaningful results.

Updating the District Cost Factors using the current methodology with 1999 data will result in more questions than answers. We recommend that the current DCF's be maintained and the Department's efforts be placed in re-examining the methodology.

There are two primary approaches to an analysis of district level costs. The first is a study similar to the one in 1998 that seeks to understand the reasons for why these costs vary by school size and location. For these types of indirect costs, a typical study would be to determine major cost pools and identify unique drivers for the pools. A private industry approach to understanding indirect costs is to develop cost pools based on distinct activities, hence the name activity-based costing (or ABC). The ABC approach has become quite popular in the public sector as well, as it can lead to the creation of standards that can be used to monitor and control indirect costs.

The second approach is a rate-setting approach. Indirect cost would be examined to the extent that expenditure goals could be developed. A funding methodology could then be devised to provide incentives to school districts for achieving these goals. This approach requires a more clearly defined public policy component than the activity-based approach.

In closing, the McDowell Group offers a two-step recommendation. The first is to assemble a preliminary study team comprised of Alaska education experts with a mix of rural and urban school district operations experience. This study team would determine and examine critical issues and develop project objectives. The second step is to design an on-going cost research program that specifies data that will properly account for regional and school size differences in district level and administrative costs.

## **TAB 2**

# **Comparison of Old to New Funding Formula**



## Public School Funding Formula *Comparison of Old to New Funding Formula*

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### Introduction

The passage of Senate Bill 36, Ch. 83, SLA 1998, carried with it certain reporting requirements for the Department of Education & Early Development to the 22nd Alaska State Legislature by January 15, 2001. This report responds to the requirement under Section 47 that the department review *Funding Communities* versus *School* adjustments in the public school funding formula. In addition, a letter of intent adopted by the legislature provided further direction to the department in completing the required reports. This report will highlight key components and adjustments within Alaska's public school funding formula and illustrate the application of these components and adjustments from the previous funding *community* based formula to the current *school* based funding formula.

For the past 20 years, Alaska's public school funding formula has historically contained four major adjustments to the formula. These same adjustments can be found in most public school funding formulas in the nation. These adjustments include:

1. sparseness and size of student population;
2. special needs or categorical funding;
3. regional cost differences;
4. equalization; and
5. supplemental funding floor.



## Public School Funding Formula *Comparison of Old to New Funding Formula*

Fiscal year 1999 was the first year of implementation of Senate Bill 36 and distribution of public school funding based on the new school based funding formula. Table 1 provides a comparison of the prior community based funding formula and the current school based funding formula using the same fiscal year 1999 data set. This comparison required the conversion from instructional units under the old community formula to per student units under the newly adopted school formula. Fiscal year 1999 is the only year school district state aid was calculated using the old and new formula. This comparison was required for the first year of implementation to determine the supplemental funding floor for the school districts that needed additional funding to help transition to the new formula.

The department has analyzed each of these adjustments and compared their use with the prior funding community formula and under the new school funding formula.

### **Sparseness and size of student population**

Senate Bill 36 changed the method that the State of Alaska used to determine adjustments for sparseness and size of student population. The previous funding formula utilized a concept known as *funding communities*. The average daily membership of schools within a school district were grouped into funding communities and a formula was applied to determine the number of instructional units for the purpose of calculating each school district's basic need.



## Public School Funding Formula *Comparison of Old to New Funding Formula*

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The McDowell Group assembled a panel of Alaskans with many years of experience in the field of education to review and make recommendations to improve the adjustment mechanism in the public school funding formula. The group reviewed the funding community concept and its application under the instructional unit funding formula. The group determined that although the definition of funding communities was not being applied consistently across school districts, that even a consistent application would not result in an equitable distribution system of resources. The group determined that the school, not the community, is the fundamental cost center for delivering instructional services. The panel determined that adopting the school as the basis for funding would result in a more equitable allocation of instructional resources by providing comparable levels of instructional staffing in all schools regardless of district size and location. The group determined that schools of similar size should receive similar resources for staffing regardless of location.

Table 2 shows the change in the distribution of resources from the *funding community* concept model to the *school* model that was adopted by the legislature under Senate Bill 36. This comparison does not include other adjustments due to changes in district cost factor or special needs funding. As shown in Table 1, the range of change is an increase of 15.8% for the Alyeska Central School to -36.8% for the Aleutian Region School District by the elimination of the funding community concept and basing the allocations on the number of students at each school. The school district with the largest increase was Petersburg at 11.2%.



## Public School Funding Formula *Comparison of Old to New Funding Formula*

It should be noted that the McDowell Group review panel did not suggest that any school districts were over funded under the previous funding community model rather some districts appeared to be under funded under the school funding model. Table 3 shows the change in dollars per student under the new formula as compared to the old formula. This table shows that under the old formula for the first 10 to 20 students, the allocation remains the same at \$12,200 per student. This flat level of funding for the first group of 20 students was to provide funding for fixed cost associated with operating a school facility. The change in funding on a per student basis gradually decreases after the first 20 students to accommodate for economies of scale, while the new formula provides a larger allocation initially for the first 10 students, it decreases to below \$8,000 per student by the time you reach 20 students. Table 4 demonstrates the reduction in resources being allocated to small schools serving less than 100 students.

Another issue that contributes to the change in funding is the number of items that receive adjustment. For example in FY 99, using the funding community model there were 267 funding communities that received the adjustment for size while with the per school model there were 499 adjustments for size. Of the 499 adjustments for schools there were 143 schools serving less than 100 students. Table 5 shows the number of funding communities compared to the number of schools by district and the number of schools serving less than 100 students by school district.

The funding community formula had a hold harmless provision for school districts that experienced a 10% drop in K-12 instructional units from one year to the next. The year before the school district experienced a decrease in K-12 instructional units



## Public School Funding Formula *Comparison of Old to New Funding Formula*

by 10% or more became the base year. In addition to its current K-12 instructional units a school district was awarded in the first year of decline, 75% of the difference from the base year, in the second year 50% of the difference between the current year and the base year, and in the third year 25% of the difference between the current year and the base year.

### **Special needs or categorical funding**

Categorical funding for special education, gifted and talented education, vocational education and bilingual/bicultural educational programs changed from the funding community model to the school funding model. The funding community model provided resource allocations to school districts based on the numbers of students and the types of special need services provided to each student. The program adjustments were based on the average cost of providing various levels of service within each of the program areas. For example, special education provided four adjustments ranging from \$1,525 for each student identified as gifted and talented to \$20,300 for each student identified as requiring special education intensive services. Bilingual/bicultural educational programs had three levels of adjustments for the various types of services that students were identified as needing and vocational education had one adjustment for each student identified as enrolled in a vocational program course.

With the passage of Senate Bill 36, and the implementation of the school based funding formula, the legislature approved a block funding approach for allocating resources for special need programs. The school funding model provides an increased adjustment of 20% to the districts' average daily membership after it has



## Public School Funding Formula *Comparison of Old to New Funding Formula*

been adjusted for school size and district cost factor. The 20% increase is intended to allocate resources for special education, gifted and talented education, vocational education and bilingual/bicultural educational programs. This change has resulted in an increased allocation for categorical programs of approximately \$13 million dollars under the school funding model over the funding community model. It is important to understand that although there are additional resources allocated for special needs programs under both funding models, school districts are not required to expend these funds on special needs programs. In other words, the funds are discretionary and local school boards have the responsibility to determine the appropriate expenditures for these funds.

### **Regional cost differences**

Senate Bill 36 continues to provide an adjustment for regional cost differences. The McDowell Group report defined these costs as "District Cost Factors." The District Cost Factors differ from the previous Area Cost Differentials in how they were derived. There is also a slight change in the way they are applied in the two funding formulas. The previous Area Cost Differentials were applied to all instructional units which included the K-12 and categorical units. The current District Cost Factors are applied to the student counts at the point they have been adjusted for school size and carry through to the 20% special needs adjustment. The District Cost Factors are not applied to the adjustments for students requiring intensive services or correspondence program counts.



## Public School Funding Formula *Comparison of Old to New Funding Formula*

The previous Area Cost Differentials were calculated using a market basket approach measuring the differences in items such as fuel and utilities between districts. The current District Cost Factors were calculated using school district audited financial data and reflect the per student district operating cost, compared to per student statewide operating costs, as well as other adjustments. The District Cost Factors represent the cost of goods, numbers of students, dispersion of schools, cost of travel, and other factors that affect district operational costs. Because the District Cost Factors reflect factors other than the price of goods, neighboring districts will not necessarily have similar cost factors.

Senate Bill 36 requires the department to review the District Cost Factors and recommend changes to the legislature every other year beginning January 2001. The department intends to employ the McDowell Group methodology in order to update the current District Cost Factors. The first report on the District Cost Factors and the results of the department's review are presented to the legislature under a separate report.



## Public School Funding Formula *Comparison of Old to New Funding Formula*

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### Equalization

The funding community and the school models both make adjustments for instructional units or average daily membership then apply dollars to the base to arrive at Basic Need. Basic Need is the starting point of the equalization formula and provides all districts with needed resources based on the various formula adjustments. Funding components of Basic Need include required local effort, federal impact aid, and state aid. These three components determine the shares of local, federal, and state resources that make up Basic Need.

The State of Alaska must meet a federal equalization test known as the "disparity test" in order to consider federal impact aid dollars in the public school funding formula. The disparity test measures the amount of revenue per student among the 53 school districts. The federal law limits the per student wealth between districts to 25%. The wealthiest district in the state is not allowed to have more than a 25% increased per pupil revenue over the poorest district in the state. The state maintains this standard by placing a cap on local contributions that exceed the required local effort. The state imposed cap on excess local contributions is equal to 23% of the districts' basic need. Again, all districts are considered equal at basic need so by placing a cap on excess local revenues equal to 23% of the districts' basic need, the state will continue to meet the federal equalization standard of 25%.



## Public School Funding Formula *Comparison of Old to New Funding Formula*

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### Supplemental funding floor

The supplemental funding floor is a mechanism to assist school districts in the transition from the funding community based formula to the school formula. In the first year of the new formula, districts that qualified for more state aid under the funding community formula than they did under the new school formula were allocated transition funding called the "Supplemental Funding Floor."

For example, under the funding community formula a district may have qualified for \$10,000 per student but under the new school formula calculation, will qualify for \$9,000 per student. Using the supplemental funding floor, under the school formula the district was allocated \$9,000 per student plus an addition \$1,000 per student as a supplemental funding floor to ease the transition to the new funding level. As the school districts' student population changes, the \$1,000 per student of supplemental funding floor will erode. The erosion of the supplemental funding floor will eventually bring the school districts' per student allocation down to a total of \$9,000 per student as determined by the new school funding formula.

This transitional provision differs substantially from other transitional or hold harmless clauses previously used when the funding formula was modified. Previous transition language required a school district to adjust to its new funding level in a three-year period. The supplemental funding floor only erodes due to changes in the district student population providing a much more gradual change to the new funding level.



## Public School Funding Formula *Comparison of Old to New Funding Formula*

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School districts qualified for a total of \$17.4 million dollars in supplemental funding floor in fiscal year 1999. As the supplemental funding floor erodes, the money is lost from the funding formula. This means the public school funding formula will have \$17.4 million less in state support once the supplemental funding floor is completely eroded.

### **Recommendations**

The department recommends the repeal of AS 14.17.490(d), erosion of the supplemental funding floor.

The department recommends that AS 14.17 be amended to include a hold harmless provision for school districts that experience a decrease in student enrollment of 10% or more from one year to the next.

Alaska Department of Education and Early Development  
 Public School Funding Formula  
 Funding Community versus Per School Funding FY 99

**Table 1**

	<b>Prior Funding Community Formula</b>	<b>SB36 Per School Formula</b>	<b>Change</b>
<b>Size Adjustment</b> Including correspondence programs	614,147,116	606,662,800	(7,484,316)
<b>Categorical Programs</b> Special Ed., Gifted and Talented, Vocational and Bilingual/Bicultural	131,352,520	144,362,544	13,010,024
<b>District Cost Factors</b>	63,619,950	71,898,973	8,279,023
<b>Basic Need</b>	<u>809,119,586</u>	<u>822,924,317</u>	<u>13,804,731</u>
<b>Required Local</b>	(136,790,501)	(140,608,152)	(3,817,651)
<b>Impact Aid</b>	(43,363,354)	(41,830,973)	1,532,381
<b>FY99 Cap on Increases @ 60%</b>	-	(9,070,746)	(9,070,746)
<b>Military Impact Aid and Contracts</b>	24,592,406	24,592,406	-
<b>State Aid</b>	<u>653,558,137</u>	<u>656,006,852</u>	<u>2,448,715</u>
<b>REAA Supplemental Funding</b>	1,256,335	-	(1,256,335)
<b>Quality School Grants</b>	-	3,341,825	3,341,825
<b>Supplemental Funding Floor</b>	-	17,379,523	17,379,523
<b>Total State Aid</b>	<u>654,814,472</u>	<u>676,728,200</u>	<u>21,913,728</u>

Alaska Department of Education & Early Development  
 Changes in funding from funding communities to per school model FY 99

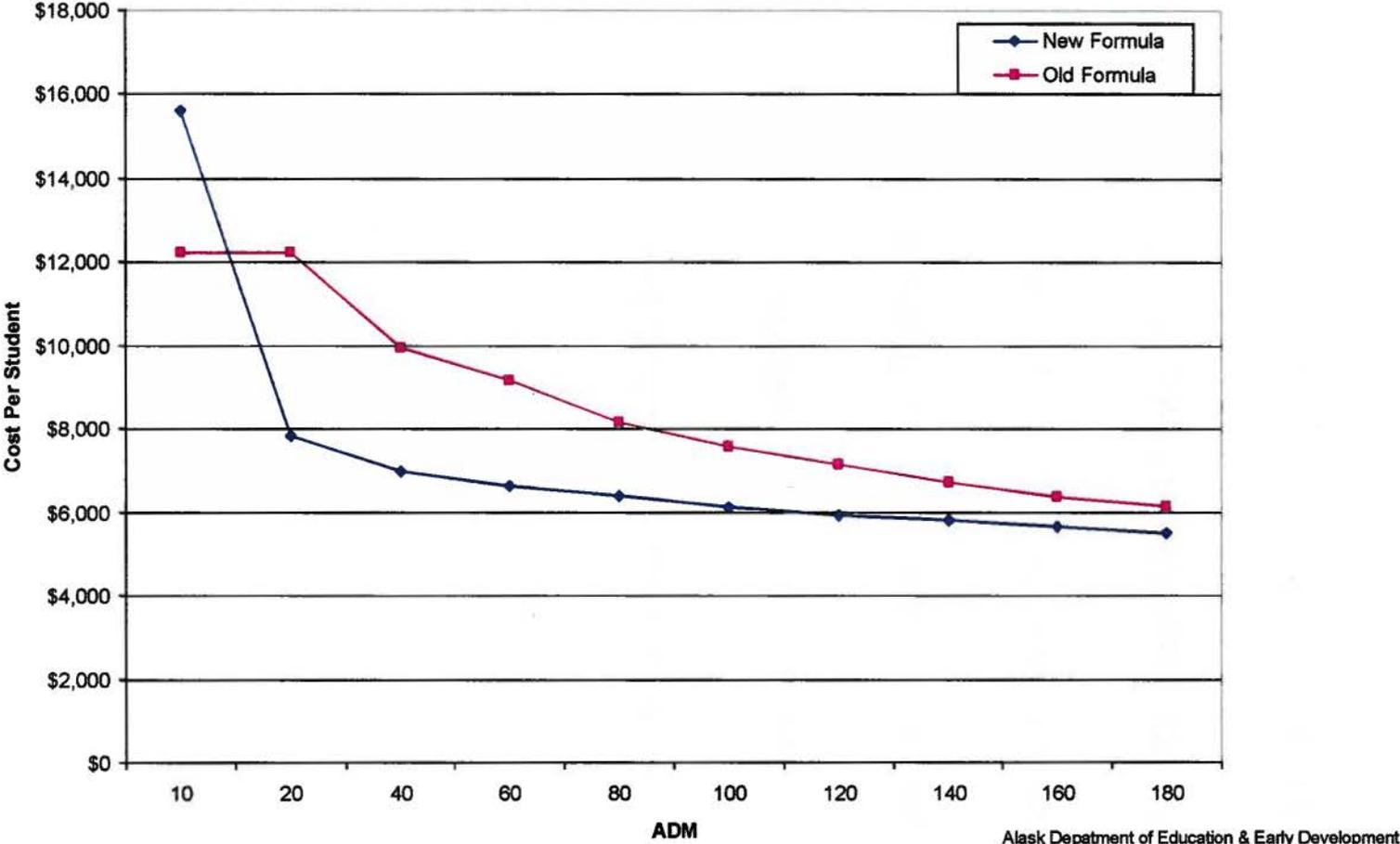
**Table 2**

	Old Formula Funding Communities	New Formula Per School	Difference	Percentage Change
Alaska Gateway	3,656,340	3,154,640	(501,700)	-13.7%
Aleutian Region	740,540	468,072	(272,468)	-36.8%
Aleutians East	2,475,990	2,149,432	(326,558)	-13.2%
Anchorage	197,508,240	203,848,863	6,340,623	3.2%
Annette Island	1,810,480	1,953,643	143,163	7.9%
Bering Strait	12,261,000	11,122,730	(1,138,270)	-9.3%
Bristol Bay	1,690,310	1,777,566	87,256	5.2%
Chatham	2,144,760	1,927,251	(217,509)	-10.1%
Chugach	1,409,100	892,410	(516,690)	-36.7%
Copper River	4,381,020	4,072,806	(308,214)	-7.0%
Cordova	2,388,760	2,519,426	130,666	5.5%
Craig	2,124,630	2,268,376	143,746	6.8%
Delta/Greely	5,059,950	5,080,161	20,211	0.4%
Denali	2,410,720	2,215,647	(195,073)	-8.1%
Dillingham	2,651,670	2,741,495	89,825	3.4%
Fairbanks	67,542,860	68,352,636	809,776	1.2%
Galena	13,368,150	10,844,692	(2,523,458)	-18.9%
Haines	2,319,220	2,335,041	15,821	0.7%
Hoonah	1,304,790	1,372,615	67,825	5.2%
Hydaburg	805,810	736,169	(69,641)	-8.6%
Iditarod	4,152,270	3,125,888	(1,026,382)	-24.7%
Juneau	23,771,090	24,084,720	313,630	1.3%
Kake	1,121,790	1,147,194	25,404	2.3%
Kashunamiut	1,500,600	1,591,839	91,239	6.1%
Kenai Peninsula	49,004,960	48,661,963	(342,997)	-0.7%
Ketchikan	11,558,890	12,155,735	596,845	5.2%
Klawock	1,199,870	1,213,993	14,123	1.2%
Kodiak Island	13,451,110	13,428,860	(22,250)	-0.2%
Kuspuk	3,847,270	3,168,793	(678,477)	-17.6%
Lake & Peninsula	5,302,730	3,948,231	(1,354,499)	-25.5%
Lower Kuskokwim	21,763,580	20,242,022	(1,521,558)	-7.0%
Lower Yukon	11,325,870	11,190,132	(135,738)	-1.2%
Mat-Su	57,596,810	55,059,952	(2,536,858)	-4.4%
Nenana	2,220,400	1,732,576	(487,824)	-22.0%
Nome	3,567,280	3,610,291	43,011	1.2%
North Slope	11,112,370	10,882,926	(229,444)	-2.1%
Northwest Arctic	12,067,020	11,721,480	(345,540)	-2.9%
Pelican	334,890	218,575	(116,315)	-34.7%
Petersburg	3,439,180	3,825,064	385,884	11.2%
Pribilof	1,216,340	1,055,234	(161,106)	-13.3%
Sitka	7,316,950	7,714,756	397,806	5.4%
Skagway	888,770	831,553	(57,217)	-6.4%
Southeast Island	3,119,540	2,152,677	(966,863)	-31.0%
Southwest Region	5,347,260	5,027,109	(320,151)	-6.0%
St. Mary's	894,260	836,060	(58,200)	-6.5%
Tanana	772,870	689,855	(83,015)	-10.7%
Unalaska	1,801,940	1,944,260	142,320	7.9%
Valdez	3,837,510	4,178,380	340,870	8.9%
Wrangell	2,526,620	2,671,443	144,823	5.7%
Yakutat	1,138,870	1,040,318	(98,552)	-8.7%
Yukon Flats	3,625,230	2,554,020	(1,071,210)	-29.6%
Yukon/Koyukuk	4,668,330	3,772,625	(895,705)	-19.2%
Yupit	2,723,650	2,595,178	(128,472)	-4.7%

ACS	6,259,546	7,250,037	990,492	15.8%
Mt. Edgecumbe	1,617,110	1,505,390	(111,720)	-6.9%
TOTAL	\$614,147,116	\$606,662,800	(\$7,484,316)	

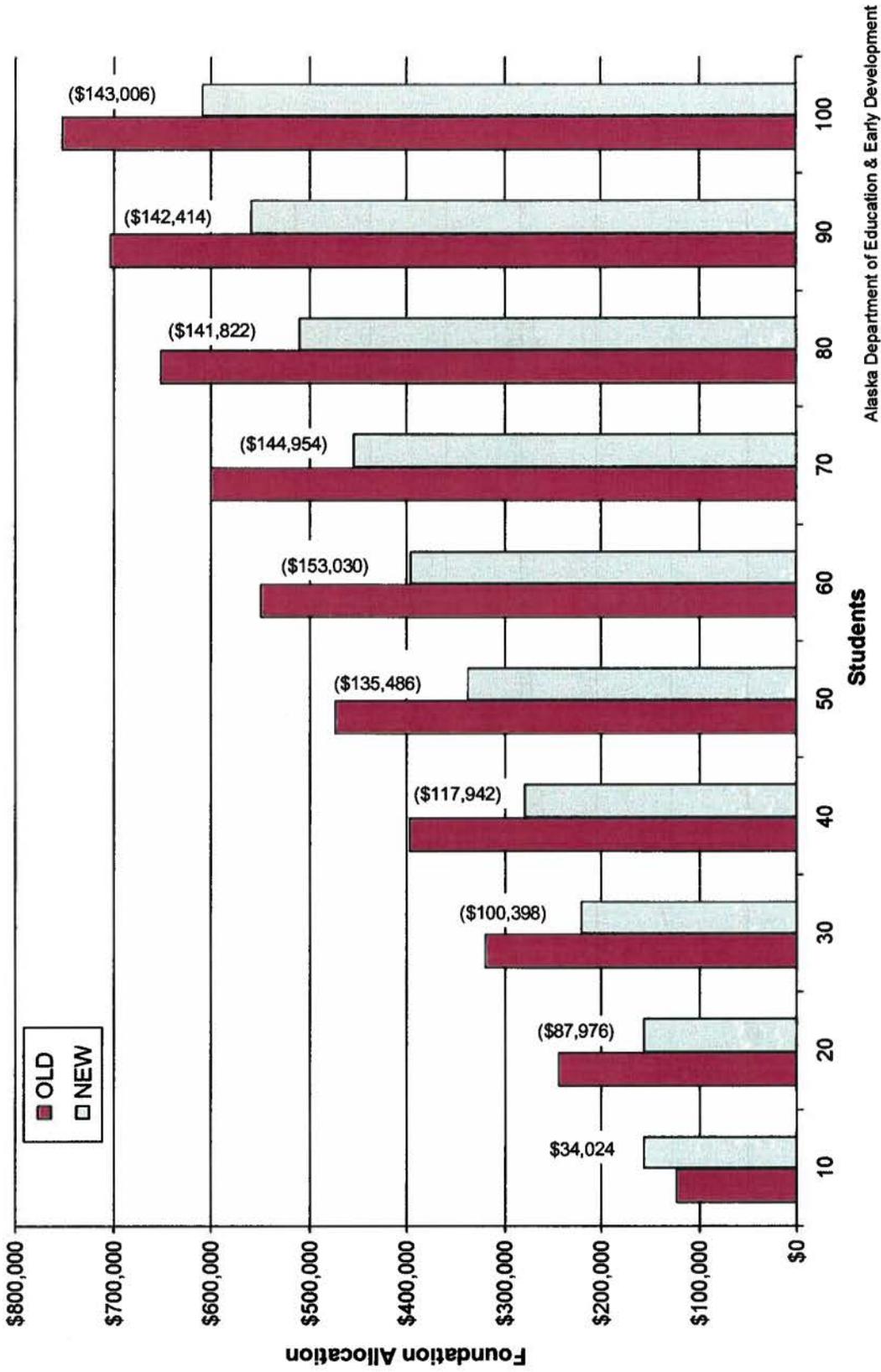
# Per Student Cost Between Formulas

Table 3



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**School Size Adjustment / Old Versus New Formula**  
**Table 4**







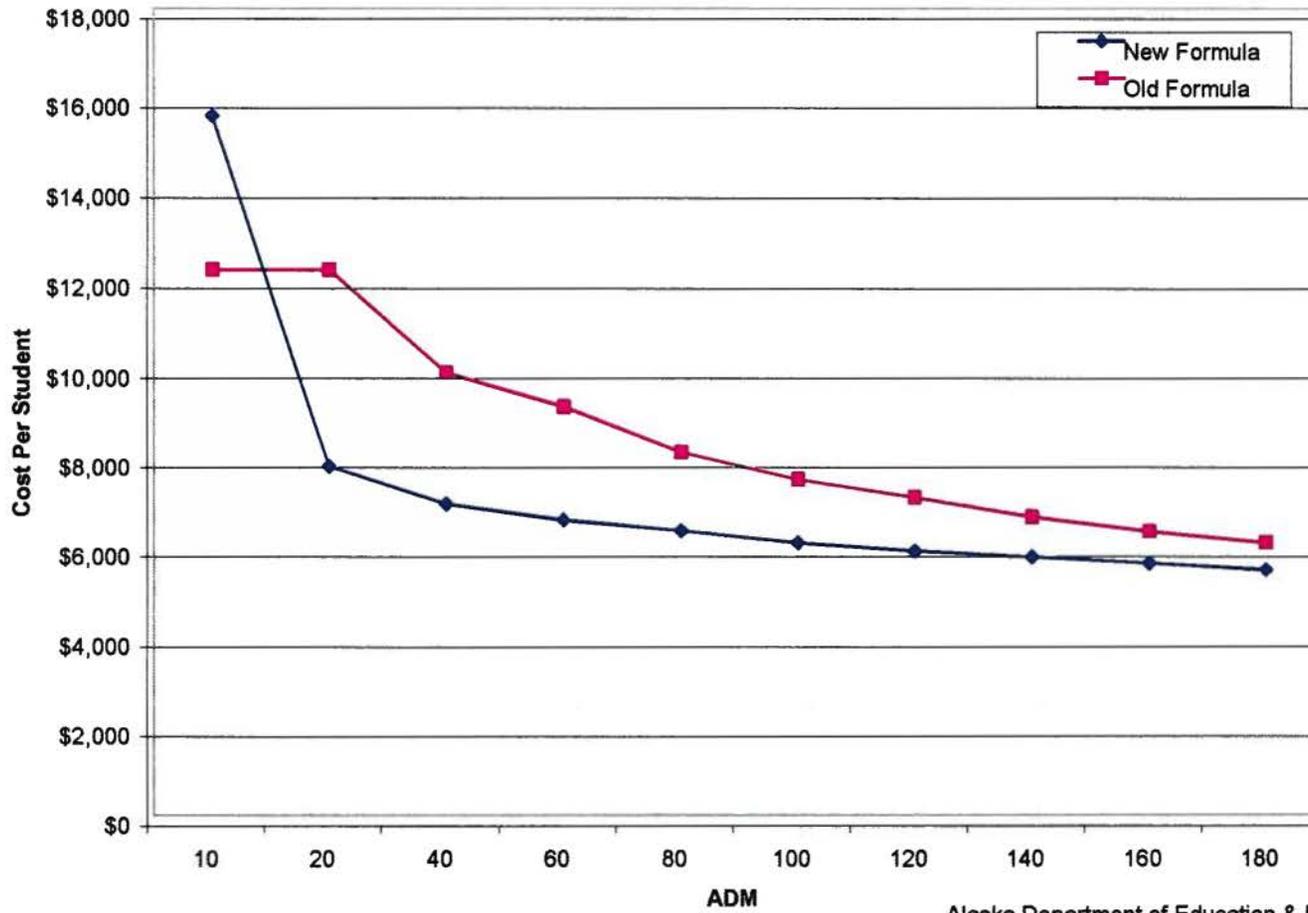
Alaska Department of Education & Early Development  
 Changes in K-12 adjustments from funding communities to per school model FY99  
 Prepared 11-10-2001

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Fairbanks North Star Borough	67,542,860	68,352,636	809,776	1.2%
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Yupit	2,723,650	2,595,178	(128,472)	-4.7%
Alyeska Central School	6,259,546	7,250,037	990,491	15.8%
Mt. Edgecumbe High School	1,617,110	1,505,390	(111,720)	-6.9%
<b>Totals</b>	<b>614,147,116</b>	<b>606,662,800</b>	<b>(7,484,316)</b>	

# Per Student Cost Between Formulas

Table 3

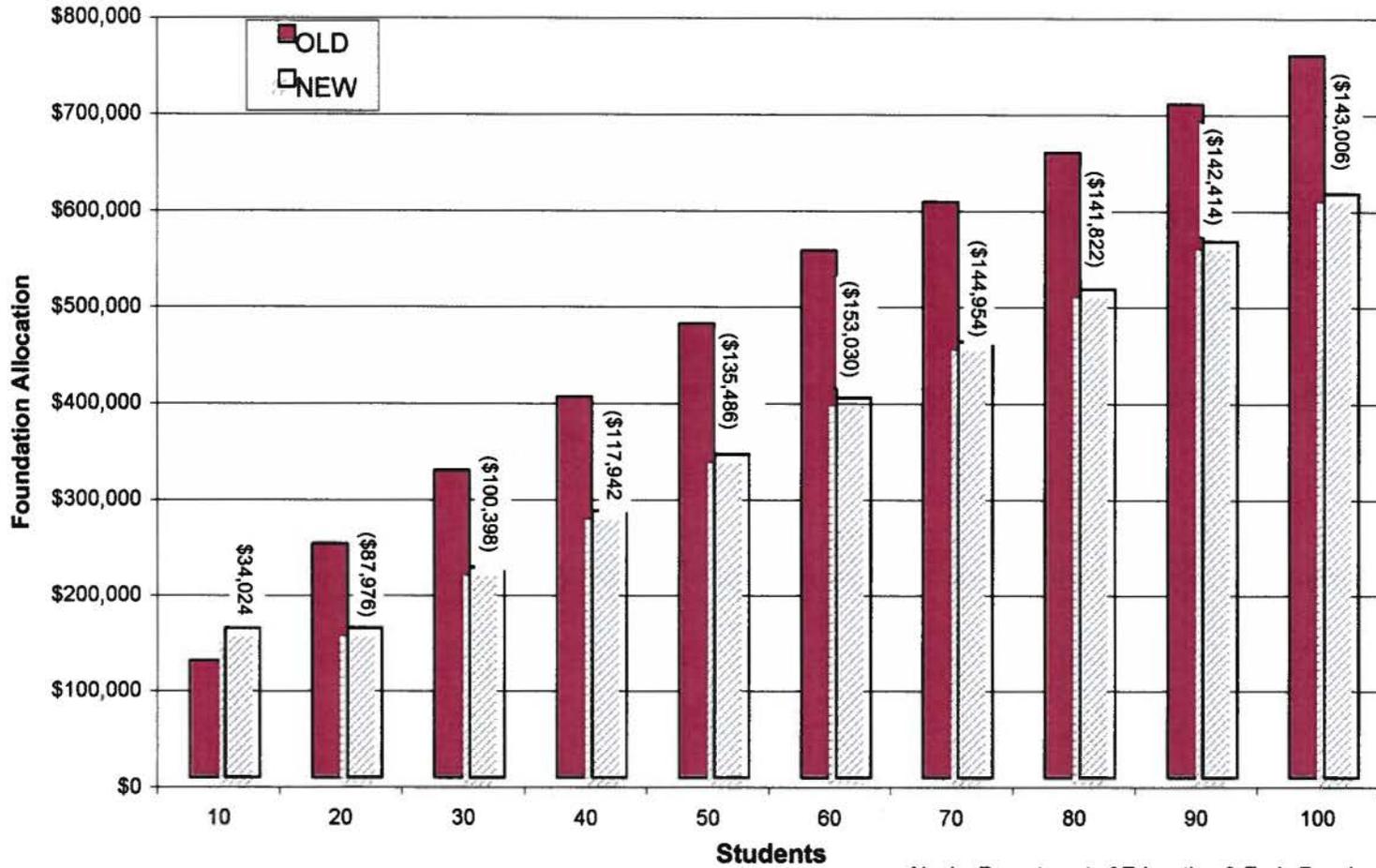


Alaska Department of Education & Early Development

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### School Size Adjustment / Old Vs. New Formula

Table 4



Alaska Department of Education & Early Development

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Table 5 1999 OLD versus NEW ADM

DISTRICT	# OF FUNDING COMM.	# OF SCHOOLS FOR ADJUST.	# OF SCHOOLS LESS THAN 100 ADM
ALASKA GATEWAY	7	8	6
ALEUTIANS EAST	6	3	3
ALEUTIAN REGION	3	8	4
ANCHORAGE	4	84	0
ANNETTE ISLANDS	1	2	0
BERING STRAIT	15	22	8
BRISTOL BAY	2	3	1
CHATHAM	5	6	4
CHUGACH	3	3	3
COPPER RIVER	7	9	5
CORDOVA	1	2	0
CRAIG	1	2	0
DELTA/GREELY	2	4	1
DENALI	3	4	2
DILLINGHAM	1	2	0
FAIRBANKS	5	28	0
GALENA	1	2	0
HAINES	2	2	0
HOONAH	1	2	0
HYDABURG	1	2	0
IDITAROD	9	9	7
JUNEAU	1	11	0
KAKE	1	2	0
KASHUNAMIUT	1	2	0
KENAI	21	39	9
KETCHIKAN	1	6	0
KLAWOCK	1	2	0
KODIAK	9	13	7
KUSPUK	8	9	8
LAKE AND PENINSULA	15	15	15
LOWER KUSKOKWIM	23	34	13
LOWER YUKON	11	19	3
MAT-SU	15	29	6
NENANA	1	2	0
NOME	1	2	0
NORTH SLOPE	8	13	4
NORTHWEST ARCTIC	11	19	3
PELICAN	1	1	1
PETERSBURG	1	3	0
PRIBILOF	2	3	1
SITKA	1	4	0
SKAGWAY	1	2	0
SOUTHEAST	11	9	7
SOUTHWEST	9	12	6
ST. MARY'S	1	2	0
TANANA	1	2	0
UNALASKA	1	2	0
VALDEZ	1	3	0
WRANGELL	1	2	0
YAKUTAT	2	2	0

C:\Program Files\Qualcomm\Eudora Mail\Attach199oldV3newADM Table 5.xls

Alaska Department of Education and Early Development			
Funding Communities versus School Adjustments FY 99			
YUKON/PEPPAS	11	10	7
YUKON/KOYUKUK	10	11	9
YUPIIT	3	6	0
ALYESKA CORRES*	1	0	0
Mt. EDGECUMBE	1	1	0
<b>TOTALS</b>	<b>267</b>	<b>499</b>	<b>143</b>

# TAB 3

## Educational Adequacy



## Public School Funding Formula *Educational Adequacy*

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The passage of Senate Bill 36, Ch. 83, SLA 1998, included specific reporting requirements for the Department of Education & Early Development to the 22nd Alaska State Legislature by January 15, 2001. This report responds to the requirement to prepare a review of *educational adequacy* in the schools of Alaska.

There has been significant effort in implementing the new formula, developing regulations, and working with districts to improve the quality and comparability of financial data. The department has worked with school districts to meet the minimum expenditure on instruction requirement and to improve the school districts' uniform chart of accounts for collecting expenditure data.

The Department of Education & Early Development convened a broad-based group of Alaskans concerned with public education to address the issue of educational adequacy in Alaska. Participants included representatives from the Alaska Parent-Teachers Association (PTA), NEA-Alaska, Alaska Association of School Boards, Alaska Association of School Administrators, Alaska Association of School Business Officials, and Alaska Municipal League.

The group deliberated for two-and-one-half-days and reached agreement on the definition, data needs, and methodology to be used in measuring educational adequacy. The group defined educational adequacy as:

An adequate education shall provide all students opportunities to acquire the *knowledge and skills* necessary to prepare them to take a productive role in society.



## Public School Funding Formula *Educational Adequacy*

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The school finance system must provide sufficient revenues to assure all students meet or exceed Alaska performance standards in all areas.

These are the necessary components of an adequate education:

1. Students are exposed to locally adopted curricula that meet or exceed Alaska State Standards in English/Language Arts, Mathematics, Science, Geography, Government and Citizenship, History, Skills for a Healthy Life, Arts, World Languages, Technology, Employability and Library/Information Literacy.
2. Students are taught by qualified educators who are provided the time and support for professional development.
3. Students learn in a safe environment.
4. Facilities are well maintained.
5. Students have their diverse learning needs met.
6. There are effective partnerships between schools, families, and the community.
7. School buildings support appropriate technology for programs.



## Public School Funding Formula *Educational Adequacy*

8. All students are given age-appropriate opportunities to participate in all aspects of school life including all student activities.

Although the decisions of this group were reached independently, they are consistent with decisions of educational policy makers across the nation in terms of defining educational adequacy and identifying the conditions necessary to accomplish it. An important item to note is that the group identified that the educational adequacy of the public school funding formula must be measured against the base student allocation set in Alaska Statute 14.17.470.

The department considered the suggested data needs identified in the report and has provided some general statewide statistics that demonstrate the changes that have occurred in education funding over the past ten years. (*See attached Bullet Sheet.*) The department also focused on changes to the Anchorage School District because Anchorage is considered the base by which all other school district adjustments in the foundation formula are measured from. Anchorage is considered the base because of its large and dense student population and because it is a main distribution center for many Alaska communities.

The Anchorage School District provided the department with statistics that illustrate the changes that have occurred over the past ten years on a per student basis. The information clearly demonstrates that the district has increased per-pupil expenses, but state aid has increased as well. The increase in state aid is due mainly to enrollment increases that have occurred in the past ten years. In addition to the statistics, the Anchorage School District provided information on the state and federal changes to the bilingual and special education programs. They provide an



## Public School Funding Formula *Educational Adequacy*

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in-depth discussion of how those program costs have escalated over the past ten years. Copies of the reports from the educational adequacy retreat and the information provided by the Anchorage School District are attached to this report as appendixes.

### **Accountability**

The Alaska legislature is requiring that the department and school districts be accountable for the funding it receives. In SB 36, the legislature added a requirement that districts spend 70% of their school operating funds on instructional services. In addition, the legislature directed the department to collect more uniform and detailed financial data from school districts. The department and school districts have responded to both of these directives.

The department has worked with school districts to develop a revised chart of accounts that clarifies code descriptions with new required codes to provide more accurate and detailed expenditure reporting. The State Board of Education & Early Development adopted the revised chart of accounts at its December 8, 2000 meeting. The new chart of accounts becomes effective July 1, 2001.

The department has also been working with school districts in meeting the 70% instructional requirement. Districts that cannot meet the new requirement may apply to the state board for a waiver. The waiver request must demonstrate that there are costs beyond the control of the school district as justification for their waiver.



## Public School Funding Formula *Educational Adequacy*

In response to legislative concerns over how much school districts are spending on administrative expenses, districts have been reducing costs over the past ten years. In FY1990, school districts were spending \$618 per student or 8.5% of the school operating fund on district administrative services. By FY2000, school districts were spending \$469 per student or 5.9% of the school operating fund on district administrative services. This represents a 2.6% reduction in school operating fund expenses on district administrative services.

In addition to the previous two requirements, SB 36 required the department to develop an assessment system to measure student performance. The tests are based on Alaska standards in reading, writing, and math and are given at grades 3, 6, 8, and the high school qualifying exam is administered for the first time to sophomores in high school. High school students are allowed to take the high school qualifying exam twice a year and for two additional years after they have completed other high school graduation requirements.

The results of the assessments given to students in grades 3, 6, and 8 will assist the department and school districts in identifying areas of weakness within the educational delivery system and develop action plans or strategies to assist students to improve performance.

School districts are utilizing the Quality Schools Grant funds, a component of the school funding formula, to develop intervention strategies and remedial programs. Currently, school districts are using these grant funds for activities such as focus



## Public School Funding Formula *Educational Adequacy*

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programs for reading, writing, math, summer school, extended days, tutors, and additional staff.

### **Foundation Formula**

The money distributed through the foundation funding formula provides Alaska school districts with the majority of the state's contribution to K-12 education. The funding formula allocates resources for general operations, routine maintenance, and operations of school facilities. General operations include: staff salaries and benefits, teaching supplies, textbooks, communications, contracted services, school, and district administrative services. Operations of school facilities include: custodial and maintenance staff salaries and benefits, utilities, and other expense associated with routine maintenance to operate school facilities.

The foundation program funding has increased from FY1990 to FY2000 mainly due to enrollment growth. From FY1990 to FY2000 enrollment increased 25%. The legislature has continued to fully fund enrollment increases during the 1990's. Each \$100 increase in the base student allocation set in Alaska Statute 14.17.470 requires approximately \$21 million in additional state support.

The foundation funding formula program base has been increased twice during this ten-year period. Once, in FY93 by 1.7% or approximately \$12 million, and again in FY99 by 3.3% or approximately \$21 million. The combined total of the two increases is 5% or approximately \$33 million in ten years. In FY90, basic need was about \$625 and FY2000 basic need was about \$816, an increase of almost 31%. This increase was



## Public School Funding Formula *Educational Adequacy*

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due to the combination of the 25% increase in enrollment and the combined increased funding of 5% for FY93 and FY99.

Federal impact aid has also increased approximately 26% from FY90 to FY2000. Federal impact aid funds increased from \$73 million in FY90 to almost \$92 million in FY2000. The number of students being served drives the Public School Funding Formula and the Federal Impact Aid Program. Because enrollment increased by 25% from FY90 to FY2000, both programs increased resource allocations by approximately the same percentages, excluding the 5% increase in the foundation formula base.

However, this is not true for local contributions to schools. The required local contribution to the schools is based strictly on the value of the property within the municipality and not the number of students being served. During this same ten-year period, required local effort increased from \$105 million to \$144 million. This represents an increase in required local effort of almost 37% or \$39 million. More importantly is how local municipalities responded with additional local contributions to schools from FY90 to FY2000. Actual local contributions to schools increased by 55% or \$98 million. Municipalities increased their contribution by \$59 million more than the formula required, in essence offsetting a portion of inflation while the state and federal governments were covering enrollment growth.

Municipalities have responded to the legislature's desire for accountability and participation by providing increased local contribution over the amount required by the foundation funding formula over the last ten years.



## Public School Funding Formula *Educational Adequacy*

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Another example of shifting the financial burden to municipalities is to look at the proportion of state aid to other revenues. The department looked at the school operating revenues for the Anchorage School District for FY90 and FY2000.

In FY90, the state applied for impact aid for the Anchorage military students then paid Anchorage state tuition for those students. Beginning in FY94, the state discontinued the tuition payments and started allocating the impact aid it received directly to the Anchorage School District. For the purpose of this comparison, the FY90 state tuition payments or approximately \$6.2 million was reclassified as federal impact aid funds. With this adjustment, federal impact aid accounted for approximately 3.5% of the school operating fund revenues for both FY90 and FY2000.

Impact aid aside, the major change in revenues occurred between the state foundation program and the local revenue support for education. In FY90, the municipal appropriation to schools in Anchorage was approximately \$62.2 million. In FY2000, the municipal appropriation to schools in Anchorage was approximately \$97.5 million, almost a 57% increase for the ten-year period. While state foundation aid in FY90 was approximately \$145.6 million and in FY2000 was \$198.6 million, an increase of almost 36%.

If the state were to match the local contribution effort of the Anchorage municipality, state foundation aid would have been almost \$228.6 million in FY2000. This would represent a \$30 million increase in state foundation aid to the Anchorage School District. To accommodate the \$30 million increase for Anchorage, the current



## Public School Funding Formula *Educational Adequacy*

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base student allocation of \$3,940 would have to be increased by \$456 to \$4,396. The estimated total cost for increasing the base student allocation to \$4,396 statewide in FY2000 would have been approximately \$95.2 million.

In FY2001, the state foundation formula required \$19.2 million less in state support over the previous year. This decreased effort was due to three factors; declining enrollment, increased required local effort, and increased federal impact aid. The FY2002 budget will require \$10.5 million less than the FY2001 foundation formula budget due to increases in required local contribution and federal impact aid funds for a drop in state aid for education of approximately \$29.7 million for the two years. However, the legislature did approve a one-time appropriation in FY2001 of \$6.2 million for Learning Opportunity Grants.

### Teachers

Recruitment of qualified and experienced teachers continues to become more difficult in Alaska as it is for much of the United States. Many states and outside school districts offer incentives as: signing bonus, down payment on a home, mortgage subsidy, and student loan repayment programs. (*See examples of teacher incentives offered in other states.*) These are examples of the recruiting techniques used beyond the annual salary to entice teachers to sign contracts. Due to limited resources, Alaska school districts continue to struggle to be competitive with other states and outside school districts when recruiting teachers.

From FY99 to FY2000 the average teacher salary in Alaska increased less than 1%. This reflects the smallest increase in average teacher salary in the nation from FY99



## Public School Funding Formula *Educational Adequacy*

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to FY2000. For the ten-year period from FY90 to FY2000, the average teacher salary stated in constant dollars decreased 11.7% and is the largest decrease in the nation for this time period. (*See National Education Association attachment.*)

Demand for teachers in Alaska has already exceeded supply, leaving unfilled positions across the state in math, special education, and speech pathology. For the 1999-2000 school year, 1,335 new teachers were hired in Alaska. On the first day of school 84 teaching positions were still unfilled, and some remained unfilled for up to two months. Districts report that they are scraping the bottom of the barrel, forced to hire unqualified teachers on emergency certificates, and teachers with minimal paper qualifications who are unsuitable for the positions.

The amount of state support through the foundation program impacts the level of wages, benefits, and incentives that school districts can offer to recruit and retain teachers. State support through the foundation program has remained relatively flat in current dollars for ten years, but when stated in constant dollars to reflect inflation it has actually decreased. Alaska school districts have had to hold the line when negotiating new salaries and benefits with its certified and non-certified staff.

As recently as 1989 Alaska was reported to have the highest average teacher salaries in the nation. According to the NEA, Alaska's average teacher salary in 1989 was \$42,818. In 1999, Alaska is reported to have slipped to number eight in the nation with an average teacher salary of \$48,085. The average teacher salary in Alaska has increased about 12.3% for the past ten-years, but when stated in constant dollars to reflect inflation it has decreased by approximately 11.7%.



## Public School Funding Formula *Educational Adequacy*

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As discussed in the foundation formula section of this report, the state foundation formula was increased approximately 5% in current dollars excluding increases for enrollment growth. This means the additional 7.3% increase in current dollars has come through additional local contributions and increased designated grants. Municipalities continue to increase local contributions and school districts continue to apply for and receive supplemental grants from other sources. These are more examples of municipalities and school districts being accountable to the state legislature by seeking and securing supplemental resources.

### **Inflation**

The foundation program statute does not have an inflationary adjustment for the base student allocation of \$3,940. To place an inflationary adjustment in Alaska Statute 14.17 would not bind future legislatures. The legislature would continue to have the power to determine the appropriate level of funding each fiscal year. The inflationary adjustment would amend the base student allocation that is used to calculate school district entitlements under the foundation funding formula.

The consumer price index for Anchorage has risen approximately 30% from 1990 to 1999. The January-to-January index rose 29.57% and the July-to-July index rose 30.7% in ten years. Between 1990 and 1999, the legislature has increased the base foundation funding formula approximately 5%. Many school districts have had to absorb the effects of the additional 25% of inflation. Many municipalities have increased the local contribution to offset the effects.



## Public School Funding Formula *Educational Adequacy*

Increasing the base student allotment by the additional 25% inflation factor would result in an increase of \$985, or a revised student allotment of \$4,925. If the base student allotment were \$4,925, overall state foundation aid would increase by more than \$200 million.

The FY2002 foundation program budget request is \$665 million to educate an estimated 133,300 children statewide. In FY2001, Alaska spent \$664 million to inflation proof the permanent fund. It is estimated in FY2002 Alaska will spend \$714 million to inflation proof the permanent fund. In FY2002, Alaska will spend approximately 7.4% or \$49 million dollars more to inflation proof the permanent fund than it will spend on the state's 133,300 children's K-12 education.

### **Facilities**

In 1990, the average age of a school facility was 19 years and in 2000, the average is 26. With the increasing age of school facilities one would expect the annual operating and routine maintenance cost to increase. In FY1990, school districts were spending a statewide average of \$1,266 per student for facility operations and maintenance and in FY2000, only \$1,244 was spent.

In FY1998, the legislature passed a law requiring all school districts to have a preventative maintenance plan in place by July 1, 1999 in order to be eligible for state funding for school construction or major maintenance projects. The plan must include documented evidence of a maintenance management program, energy management, custodial care program, training program for staff and a renewal and replacement schedules for the electrical, mechanical, structural and other



## Public School Funding Formula *Educational Adequacy*

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components of the facility. While the preventative maintenance plan is necessary to protect the state's interest in school construction projects, there was no new money provided to assist districts in meeting these new reporting requirements. School districts are forced to use existing resources to meet the new reporting requirements.

### **Conclusion**

The Alaska state legislature has required increased accountability for the funds it appropriates for K-12 education before it considers increases to the foundation formula program. This report has identified many areas in which the department, school districts, and municipalities have responded.

School districts have held the line when negotiating contracts with staff and reduced administrative expenditures. Local municipalities have increased local contributions above the amounts required in law to support local schools. The department has implemented new laws and regulations that have improved school district reporting and accountability. The department has implemented the statewide assessment system to demonstrate how well children are learning, and to identify weaknesses with the current delivery model.

The burden of financing the educational system in Alaska has been shifting from the state to local governments over the last ten years. Inflation has eroded school districts' purchasing power for supplies, operational cost, and their ability to recruit and retain qualified teachers.



## Public School Funding Formula *Educational Adequacy*

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### Recommendations

Based on the adequacy group's work and the department's analysis, the department recommends that changes be made to the public school funding formula to recoup losses due to inflation and to provide for future inflationary adjustments. These recommendations and others included in Tab 1 and 2 will be forwarded to the governor's education funding task force. The task force recommendations are due to the governor and the State Board of Education & Early Development on February 1, 2001.

# Educational Adequacy Retreat

August 2-4, 2000

Anchorage, Alaska

FINAL REPORT

APPENDIX A

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## EDUCATIONAL ADEQUACY

### Background

The passage of SB 36 carried with it certain reporting requirements for the Department of Education and Early Development to the Alaska State Legislature. A letter of intent was adopted by the legislature and approved by the Governor directing the department to include as one of the reports a review of *educational adequacy* in the schools of Alaska. It is recommended that the department use this document as framework in preparing the final educational adequacy report. The final report is due to the legislature by January 15, 2001.

In early August of 2000, Commissioner of Education & Early Development Richard S. Cross convened a broad-based group of Alaskans concerned with public education to address the issue of educational adequacy in Alaska. Participants included representatives from the Alaska Parent-Teachers Association (PTA), NEA-Alaska, Alaska Association of School Boards, Alaska Association of School Administrators, Alaska Association of School Business Officials, and Alaska Municipal League.

The group deliberated for two-and-one-half-days and reached agreement on the definition, data needs, and methodology to be used in measuring educational adequacy. Although the decisions of this group were reached independently, they are consistent with decisions of educational policy makers across the nation in terms of defining educational adequacy and identifying the conditions necessary to accomplish it. An important item to note is that, the group identified that the **educational adequacy of the public school funding formula must be measured against the base student allocation set in Alaska Statute 14.17.470.**

**AS 14.17.470. Base student allocation.** The base student allocation is \$3,940.

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## EDUCATIONAL ADEQUACY

### Definition

An adequate education shall provide all students opportunities to acquire the *knowledge and skills* necessary to prepare them to take a productive role in society.

The school finance system must provide sufficient revenues to assure all students meet or exceed Alaska performance standards in all areas.

These are the necessary components of an adequate education:

1. Students are exposed to locally adopted curricula that meet or exceed Alaska State Standards in English/Language Arts, Mathematics, Science, Geography, Government and Citizenship, History, Skills for a Healthy Life, Arts, World Languages, Technology, Employability and Library/Information Literacy.
2. Students are taught by qualified educators who are provided the time and support for professional development.
3. Students learn in a safe environment.
4. Facilities are well maintained.
5. Students have their diverse learning needs met.
6. There are effective partnerships between schools, families, and the community.
7. School buildings support appropriate technology for programs.
8. All students are given age-appropriate opportunities to participate in all aspects of school life including all student activities.

### Data Needs

See Appendix A for data definitions.

- I.
  - A. Achievement information based on standards and related costs:
    - Quality Staff
    - Curriculum
- II. Information regarding the financial impact of:
  - A. Loss of Buying Power
  - B. Special Needs
  - C. Facilities
  - D. Violence/Social Issues
  - E. Staffing

APPENDIX A

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## EDUCATIONAL ADEQUACY

### Methodology

- I. Measurable standards for student achievement have been set by the State of Alaska to meet the higher expectations of the public. "Making the connection between school dollars and student achievement is the principal school finance challenge of the next century."<sup>1</sup>
  
- II. To meet that challenge, we must identify and reflect on the changes that have occurred over the last 10 years.
  - A. The basic amount of school funding per student has not changed since 1993.
  - B. Inflation has eroded buying power.
  - C. New requirements have been added without the dollars to cover their costs.
  - D. Societal changes such as concerns for student safety and changing demographics have impacted schools.

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<sup>1</sup> Source, *20/20 Vision, a Strategy for Doubling America's Achievement by the Year 2020*, The Consortium on Renewing Education, November 1998.

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## EDUCATIONAL ADEQUACY

### Appendix A

#### Data Definitions

**Quality Staff** - Discussion and information related to years of experience including relevant training and appropriate licensure of teaching staff.

**Curriculum** - Discussion of course offerings.

**Loss of Buying Power** - The purchasing power of the dollar when adjusted for inflation.

**Special Needs** - Changes in school districts' revenues and expenditures for categorical programs such as special education, gifted and talented, bilingual/bicultural, and vocational education. New requirements within these program areas.

**Facilities** - Age and condition and cost to operate school facilities in a manner that is safe and compliant with state building codes.

**Violence/Social Issues** - Discussion of new requirements on districts.

**Staffing** - Average teacher salaries, turnover rates, pupil teacher ratios, and numbers of administrative staff.

## Educational Adequacy Retreat Participants

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**Anchorage  
School  
District**

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P. O. Box 196614  
Anchorage, Alaska 99519-6614  
(907) 742-4000

**SCHOOL BOARD**

Peggy Robinson  
President

Dave Werdal  
Vice President

Bettye Davis  
Clerk

Rita J. Holthouse  
Treasurer

Tom Anderson

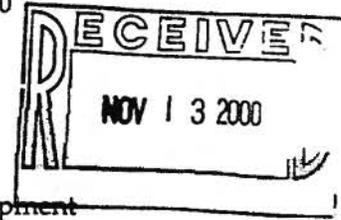
Harriet A. Drummond

Debbie Ossiander

**ACTING  
SUPERINTENDENT**

Carol Comeau

November 9, 2000



Mr. Eddy Jeans  
School Finance Manager  
Alaska Department of Education and Early Development  
801 West 10<sup>th</sup> Street, Suite 200  
Juneau, AK 99801-1894

Dear Eddy:

The Anchorage School District appreciates being asked to participate in the Department's effort to provide information to the Legislature regarding educational adequacy. The Educational Adequacy Retreat brought together urban and rural communities, school districts and interested parties to identify common interest and concerns regarding educating the students of Alaska.

Pursuant to your request, we are enclosing comparative information about the Anchorage School District for FY 1987-88 and the current year. For certain items, if information was not available for those particular years, then we have so indicated and provided information closest to that date.

We hope that the statistical/cost comparisons and narrative information relative to special needs mandates will help support the need for additional funding. This information along with all of the other mandates that have been imposed on the districts have resulted in increased per student costs.

If you have any questions or we can be of further assistance, please contact me at 742-4369.

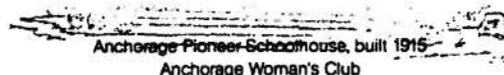
Sincerely yours,

Janet Stokesbary  
Chief Financial Officer

Enclosures

cc Carol Comeau, Superintendent (Acting)

**APPENDIX B**



ANCHORAGE SCHOOL DISTRICT SUMMARY FOR STATE DOE PROJECT

Description of Item	Starting		Actual			Actual[3]/Budgeted		
	Fiscal Year	Amount	Ending Fiscal Year	Amount	Percentage Change	Ending Fiscal Year	Amount	Percentage Change
<b>State Foundation Calculations (per ADM) [1]</b>								
State Foundation Basic Need	87/88	4,824.76	99/00	5,409.02	12.11%	00/01	0	-100.00%
State Foundation Aid	87/88	3,149.10	99/00	4,122.87	30.92%	00/01	0	-100.00%
<b>State Supplemental Budgetary Expenditures (per ADM)</b>								
Instruction (Reg., VocEd., Gifted, Bilingual)	87/88	2,449.55	99/00	3,153.58	28.74%	00/01	3,389.16	38.36%
Special education instruction (Instruction, Support)	87/88	589.26	99/00	972.34	65.01%	00/01	1,037.42	76.05%
Pupil support (Students, Instruction)	87/88	292.76	99/00	490.14	67.42%	00/01	508.50	73.69%
School administration	87/88	364.39	99/00	413.27	13.41%	00/01	417.95	14.70%
District administration (Admin., Support)	87/88	364.78	99/00	296.98	-18.59%	00/01	271.85	-25.48%
Operation and maintenance of plant	87/88	797.53	99/00	933.39	17.04%	00/01	915.26	14.76%
Community service	87/88	5.03	99/00	7.83	55.61%	00/01	7.78	54.45%
Debt service	87/88	-	99/00	0.78	#DIV/0!	00/01	-	#DIV/0!
Pupil activity (Student Activities)	87/88	53.75	99/00	54.66	1.70%	00/01	56.92	5.89%
Total expenditures	87/88	4,917.06	99/00	6,322.99	28.59%	00/01	6,604.82	34.32%
<b>CAFR GAAP Expenditures, 00/01 based on Budgetary Expenditures (per ADM)</b>								
Personnel Services	87/88	3,567.67	99/00	4,501.79	26.18%	00/01	4,690.51	31.47%
Employee Benefits	87/88	883.94	99/00	1,166.46	31.96%	00/01	1,235.80	39.81%
Purchased Services	87/88	455.06	99/00	769.31	69.06%	00/01	718.84	57.97%
Supplies and Materials	87/88	169.79	99/00	258.11	52.02%	00/01	228.43	34.54%
Capital Outlay	87/88	36.64	99/00	102.70	180.28%	00/01	50.33	37.35%
Other Expenses	87/88	40.72	99/00	37.92	-6.89%	00/01	31.10	-23.63%
Total	87/88	5,153.82	99/00	6,836.29	32.65%	00/01	6,955.02	34.95%
<b>Purchased Supplies</b>								
6th Grade English Textbook	92/93	\$ 22.44	00/01	\$ 35.88	59.89%			
Xerographic Paper, white 8.5 x 11	92/93	18.30	00/01	21.30	16.39%			
Paper, newsprint ruled, grades 1-2	92/93	3.91	00/01	5.66	44.76%			
<b>Students &amp; Buildings</b>								
ADM K-12 & Special Ed.	87/88	38,734.41	99/00	48,157.22	24.33%	00/01	48,576.00	25.41% [2]
Bilingual/Bicultural ADM Category A (Non-English)	87/88	560.50	99/00	911.00	62.53%			
Bilingual/Bicultural ADM Category B (Mostly Non-English)	87/88	280.50	99/00	2,319.00	726.74%			
Bilingual/Bicultural ADM Category C (Bilingual)	87/88	177.00	99/00	544.00	207.34%			
Bilingual/Bicultural ADM Category D (Mostly English)	87/88	271.00	99/00	457.00	68.63%			
Bilingual/Bicultural ADM Category E (English/straight foreign)	87/88	349.50	99/00	115.00	-67.10%			
Total Bilingual ADM	87/88	1,638.50	99/00	4,346.00	165.24%	00/01	5,003.00	205.34% [2]
Special Education ADM Gifted	87/88	1,448.00	99/00	1,874.00	29.42%	00/01	2,109.00	45.65% [2]
Special Education ADM Resources	87/88	2,809.00	99/00	5,422.00	93.02%	00/01	5,242.00	86.61% [2]
Special Education ADM Self-Contained	87/88	1,060.00	99/00	1,037.00	-2.17%	00/01	1,243.00	17.26% [2]
Special Education ADM Intensive	87/88	415.00	99/00	734.00	76.87%	00/01	780.00	87.95% [2]
Total Special Education ADM	87/88	5,732.00	99/00	9,067.00	58.18%	00/01	9,374.00	63.54% [2]
Special Ed - Intensive + Bilingual ADM	87/88	6,955.50	99/00	12,679.00	82.29%	00/01	13,597.00	95.49% [2]
# of School Buildings	87/88	72.00	99/00	87.00	20.83%			
<b>Salary History</b>								
Average Budgeted Teacher's Salary	87/88	40,693.00	00/01	48,748.00	19.79%			
Teachers - Low	87/88	23,863.00	00/01	32,600.00	36.61%			
Teachers - High	87/88	51,245.00	00/01	62,766.00	22.48%			
Bus Driver - Low	87/88	9.60	00/01	11.68	21.67%			
Bus Driver - High	87/88	11.50	00/01	15.88	38.09%			
Bus Attendant - Low	87/88	7.30	00/01	8.73	19.59%			
Bus Attendant - High	87/88	9.00	00/01	13.28	47.56%			
Totem - Low	87/88	7.25	00/01	10.90	50.34%			
Totem - High	87/88	11.00	00/01	17.73	61.18%			
Custodian - Low	87/88	8.00	00/01	8.99	12.38%			
Custodian - High	87/88	14.56	00/01	16.20	11.26%			
Maintenance - Low	87/88	12.38	00/01	16.20	30.86%			
Maintenance - High	87/88	18.13	00/01	23.75	31.00%			
Principal - Low	87/88	52,165.00	00/01	62,830.00	20.44%			
Principal - High	87/88	71,470.00	00/01	90,584.00	26.74%			
ACE - Low	89/90	113.00	00/01	125.90	11.42%			
ACE - High	89/90	292.68	00/01	377.51	28.98%			
<b>Major Medical Insurance (per eligible employee)</b>								
Total Cost	87/88	2,429.40	00/01	7,144.80	194.10%			
District Contribution	87/88	2,384.00	00/01	5,121.50	114.83%			
<b>Utilities (per sq. foot)</b>								
Heat for Buildings [2]	88/89	0.35	99/00	0.27	-22.81%	00/01	0.27	-22.96%
Water and Sewer	88/89	0.07	99/00	0.08	15.29%	00/01	0.07	2.84%
Electricity	88/89	0.76	99/00	0.93	21.22%	00/01	0.94	22.95%
Refuse	88/89	0.09	99/00	0.10	13.42%	00/01	0.09	3.89%

[1] Includes full FTE funding for Family Partnership Charter School in 1999-2000 which is not permanent.

[2] Contract with Aurora Gas gave ASD a 10.9% discount starting 7/1/98. It expires 6/30/01, we have been informed to expect a price increase.

[3] Numbers based on 2000-2001 actuals.

APPENDIX B

**ANCHORAGE SCHOOL DISTRICT  
BILINGUAL/MULTICULTURAL EDUCATION PROGRAMS**

**MEMORANDUM**

October 4, 2000

**TO:** Alden Thern  
**FROM:** Maxine Hill, Supervisor  
Bilingual/Multicultural Education Programs  
**SUBJECT:** BILINGUAL EDUCATION PROGRAM

Since 1987-88 have there been any mandates with regards to Bilingual?

Since 1987-88 there have been changes in the regulations, Alaska Education Regulations Chapter 34, which govern the provision of bilingual education in the State of Alaska. The purpose as stated in 4 AAC 34.10 is to meet the needs of students of limited English-speaking ability by providing educational opportunity to identified students through the establishment of bilingual education programs. Reauthorization of the regulations occurred during the 1998-99 school term. The reauthorization brought about many changes.

Each school district that enrolls limited-English-proficient (LEP) pupils is responsible for taking appropriate steps to develop their English-language skills and to provide them meaningful participation in the school district's academic program consistent with applicable state and federal standards (4 AAC 34.055). Meaningful participation is defined in Title VI of the Civil Rights Act of 1964 as equal educational opportunities. In assessing compliance with Title VI a twofold standard applies: (1) English language development; and (2) meaningful participation of LEP students in the district's educational program. "There is no equity of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education." *Lau v. Nichols*

The District has an obligation under Title VI to implement a program of services designed to provide LEP students with equal educational opportunities. The District is expected to effectively implement the educational approach that they have adopted and are expected to provide the necessary resources to implement the program.

**What expenses have been incurred because of the new regulations?**

The change, which impacts ASD most, focuses on assessment and identification of limited-English-proficient students. Prior to the 1999-2000 school-term the District was responsible for identification and assessment of language dominance for the purpose of categorizing students in one of the five Lau categories. In this process only one instrument was used to assess oral language proficiency. Since the new regulations were adopted in the 1999-2000 school-term the assessment procedure mandates measuring English-language proficiency with respect to each student's ability to speak, read, write, and comprehend English. This has necessitated increased costs to select and purchase the appropriate and necessary assessment instruments; orient and train qualified staff to administer the assessment instruments and evaluate the results.

**APPENDIX B**

### Are there trends relative to the increase in budget?

The Bilingual Education Program has been in existence in the ASD since the 1977-78 school year. Beginning with a program serving 361 students in grades K-12. The program has grown to serving approximately 12.5 times the number of students originally served. The most recent count, September 2000, confirms 3035 students in grades K-6, and 1816 students in grades 7-12.

During the 1987-88 school-term a total of 2,265 students were served in grades K-12. These students spoke a total of 55 different languages. Student demographics have changed tremendously since that time. With the increased number of students has come an increase in the number of languages spoken by students. That number as of last year was 87 different languages. Since the 1994-95 school-term ASD has experienced an increase in the number of students from war-torn countries which include students who have been orphaned or were refugees. Students speaking 7 different languages made a dramatic increase as depicted in the chart below:

Year	Serbo-Croatian	Mien	Hmong	Lao	Albanian	Russian	Total # of Languages
94/95	13	41	0	188	50	72	71
95/96	12	75	0	199	53	87	84
97/98	17	119	0	306	52	89	86
98/99	18	169	95	345	58	95	87
99/00	18	166	170	346	76	113	87

Bilingual/ESL education is organized conceptually to view the student holistically and to help students clarify options compatible with their individual goals. The evolving academic, social, and linguistic needs and potential of each student must be understood, assessed, and addressed. The program supports the English language development of students and promotes the timely acquisition of content by building on students' prior knowledge and experiences through strategic use of native languages and the learners' evolving proficiency in English.

In order to provide a program to meet the growing needs of the students it has been necessary to also increase the number of staff working with students.

Year	Learning Centers	Elementary Teachers	Tutors	Secondary Teachers	Counselors
94/95	7	7	66	10	0
95/96	7	7	76	14	0
97/98	12	10	90	16	2
98/99	11	10	98	23.8	3.7
99/00	14	12.5	102	34	4.7

### Changing Student Population

The Newcomer Center opened in September of 1997 with eleven newly immigrated, non-English-speaking students. All were Spanish-speakers from only three different countries. A relatively homogenous class resulted. By January of 1998, the group had

grown to 19 students from six countries. These students spoke three languages - Spanish, Russian, and Lingala. Movement toward greater diversity had begun.

In the fall semester of 1998, the Newcomer Center served 24 students from 13 different countries; these newcomers spoke seven different languages - Spanish, Russian, Tagalog, Korean, Polish, Chichewa, and Wolof. Presently, in the spring of 1999, Newcomer Center enrollment has grown to 27 students from 14 countries. Chinese brings the current language total to eight.

All together, over the course of the past four semesters, 53 different students have attended the Newcomer Center, 22 in 1997-98 and 34 in 1998-99 (including three from 1997-98 who attended for a second semester). Twenty-nine attended for two semesters and 24 attended for one semester; approximately 10 of the latter group may remain in the program in the fall of 1999.

Another interesting trend parallels this increase in number and diversity. There is a steady decline in enrollees' ability to read English, as measured by the IPT - Reading assessment. At the same time, more recently enrolled newcomers lack functional literacy in their first language. In the fall of 1997, all entered with some degree of first language literacy. In the spring of 1998, three students possessed only minimal literacy in their first language. Eight students served during the 1998-99 school year could not read in their first language. This finding is particularly disturbing since first language literacy is an important indicator of academic success in English. Learning to read for the first time in a second language has proven to be especially difficult.

These demographics reveal a noticeable need for intensive English language instruction for recently immigrated, non-English-speakers in the Anchorage School District. Over the past four semesters, students served by the Newcomer Center have grown steadily in number, in linguistic complexity, and in cultural and ethnic diversity. Unfortunately, the prior academic preparation of the student group as a whole shows a decline. These factors combine to dramatically increase the difficulty of an already daunting instructional challenge.

## DECISIONS AT THE STATE AND FEDERAL LEVEL THAT HAVE IMPACTED SPECIAL EDUCATION PRACTICE AND FINANCIAL EXPENDITURES FOR THE ASD SINCE 1987

Special education in the Anchorage School District has experienced many new mandated requirements, technological improvements assisting those with medical needs, and student enrollment increases since 1987. The Individuals with Disabilities Education Act (IDEA) was reauthorized in 1990 and 1997, in 1994 (OSEP) and the 9<sup>th</sup> Circuit Court supported inclusionary practice recommendations, and the state had a federal compliance audit in 1996. Each of these events put additional obligations and requirements on ASD that have increased our expenditures in the provision special education supports and services. Summarized below are the major changes in the special education program over the last 13 years. (not in order)

1. ASD must provide counseling to students certified for special education if required as part of the student's IEP.
2. ASD must provide mobility training to students certified for special education if needed as part of the IEP.
3. In 1993 the policies and practices for the provision of students with disabilities in the least restrictive environment with a focus on the regular education class was re-emphasized. This has required the IEP team to first consider the neighborhood school for students with disabilities. The landmark case heard before the 9<sup>th</sup> Circuit in 1994-Rachel Holland vs. Sacramento School District set the floor. This has increased the number of teacher assistants, health service providers, related services staff, and special education training to all the regular education teachers.
4. The IEP meetings must include a regular education teacher. Many more substitute teachers are needed to provide classroom coverage. Staff is paid an addenda if they must stay after working hours for an IEP.
5. There is a requirement to provide special education services to students with disabilities beginning at age 3.
6. There are more partnership requirements with charter and private schools requiring more administrative and personnel time. Students with disabilities are entitled to special education services if they attend either charter or private schools.
7. New medical improvements require the district to provide both the equipment and training.
8. A Manifestation Determination meeting is required when a special education student is suspended from school for more than 10 days within a school year. The IEP team must meet and determine if the student's disability impacted their behavior and if the district was providing the appropriate supports and services for the student as designated on the IEP.
9. Students, certified for special education, not in school must receive their special education supports and services as designated on the IEP. New alternative programs for students who are expelled or on long term suspension had to be created. Students, up to age 22, who are certified for special education when last attending public schools but now reside in correctional facilities must receive special education.
10. Due to medical advances and technology more children with severe disabilities survive infancy and are attending public schools. This has lead to an increased number of students with more significant disabilities and the need for more teachers and specialists. Educational services are provided in a variety of locations to include home, hospital or school.
11. Assistive technology may be required for a student with disabilities to receive educational benefit. This may require specialized and expensive equipment and extensive training for staff and parents. This district has experienced a large increase in this area due to the new medical and learning technology that has recently become available and which the district is

APPENDIX B

- required to provide. As an example; the district, at a cost of \$8000 each, may have to purchase a computerized speech system, Dynavox, that is used to assist students in basic communication. The student must also have the assistive technology available to them both at school and at home thereby having the district purchase two. Some of the Dynavoxes at home have been broken and must be replaced by the district.
12. The district may have to provide recreational therapy and / or social services for students with disabilities if required by the IEP team in order for the child to receive educational benefit. There is a large amount of parent counseling and training that is now required also.
  13. More paperwork and meeting requirements are now included in the IEP and in dealing with evaluations and assessments. IEP meetings with parents have gone from 1 meeting to 3 meetings per year, requiring all ASD members of the team to be present.
  14. Increased numbers of health services staff due to the requirement for medical intervention. Districts must provide the level of health services up to what a doctor would be needed to provide.
  15. Additional disabilities were classified for certification for special education over the last 13 years. In 1990 Other Health Impaired, Autism, and Traumatic Brain Injury were added. The district has experienced a significant increase in the number of students served. Attention deficit disorder is an area where special education gets involved and does the evaluations, holds the parent meetings, hears the complaints, and provides the specialized programs, however the state does not include them in the special education ADM counts. ASD currently has 200-300 students with this disorder. Students may qualify for special education as Other Health Impaired or a 504 plan. We have experienced a significant increase in students certified as Emotionally Disturbed. In 1987 we had 271 enrolled, while we had 698 students in 1999. Autism was added as an area of disability in 1990, the district has gone from 0 to 115 currently served. While the total numbers may seem small each student receives substantial specialized supports and services from the district.
  16. There has been an increase in the number of students who are sent out of state for special education placement at the request of parents or DFYS. The district has to pick up the educational expenditure for each child if the placement is required for the student to receive educational benefit according to the IEP team decision...
  17. There has been an increase in the district's litigation expenditures from parents who want specific teaching methodology and services provided to their child in which the district disagrees.
  18. The district is required to prepare a functional behavioral assessment for a student's behavior that interferes with their education. A Positive Behavioral Intervention Plan must then be prepared which requires 3 to 4 teachers to spend 3 to 4 hours preparing. This has created many more meetings requiring more of the teachers and psychologists time.
  19. IDEA 97 has extended the age required for student transition plans to age 14. As a result of the audit in 1996 the district is now required to provide a more extensive plan involving a variety of stakeholders. This has increased the number of vocational education teachers and has resulted in the increase in expenditures for the district's middle school, high school and ACE / ACT programs. The district must also coordinate with other outside agencies to assist the student upon leaving the educational system.
  20. Increased protections and due process rights for parents and students with disabilities, active involvement in all IEP team decisions to include initial referral for evaluation to all discipline meetings such as a manifestation determination. This has increased staff expenditures for IEP team meetings as school teams attempt to have meetings at times convenient for working parents and difficult schedules.
  21. Increased requests for independent educational evaluations from parents. This is a right of a parent to obtain at full cost to the district (approximately \$600-\$1200 per evaluation) if the parent disagrees with a district evaluation.

22. Students with disabilities must be involved in all district and state wide educational assessments such as CAT testing and Benchmarks. This has increased costs for IEP meetings to make determinations and provision of appropriate accommodations.
23. Costs for Extended School Year has escalated dramatically in past years by at least 200% as the definition for qualification for ESY has been extended by the Federal Law. Transportation and provision of related services is especially expensive for this summer program.
24. Extended school day must be considered and provided if student qualifies via the IEP team. this is especially utilized in the preschool and kindergarten program where some students need access to a full day program.
25. Provision of special education services in Headstart programs is now required at district expense.
26. The least restrictive environment clause and opportunity to be with non-disabled peers has resulted in increased costs for itinerant special education staff providing training and services to preschool students with disabilities in private preschools.
27. Increased costs for recruitment and training of special education staff. Required TA training offered on Saturdays. Recruitment teams sent out of state to recruit teachers and the need for recruitment bonuses for new staff.

**SUMMARY TABLE G. ESTIMATED AVERAGE ANNUAL SALARIES OF TOTAL INSTRUCTIONAL STAFF AND OF CLASSROOM TEACHERS**

REGION AND STATE	1998-99 (REVISED) AVERAGE SALARY FOR CLASSROOM TEACHERS				1999-2000 AVERAGE SALARY FOR CLASSROOM TEACHERS				% CHANGE OVER	
	INSTRUC-	ELEMENTARY	SECONDARY	ALL	INSTRUC-	ELEMENTARY	SECONDARY	ALL	1998-99	1989-90
	TIONAL STAFF			TEACHERS	TIONAL STAFF			TEACHERS	(CURRENT \$)	(CONSTANT \$)
1	2	3	4	5	6	7	8	9	10	11
50 STATES AND D.C.	42,459	40,293	41,155	40,582	43,460	41,310	42,212	41,575	2.45	6.9
NEW ENGLAND	51,454	45,333	45,321	45,044	52,588	46,341	46,370	46,065	2.27	6.9
CONNECTICUT	53,429	52,386	54,594	51,584	54,400	53,300	55,600	52,500	1.78	4.6
MAINE	36,125	34,576	35,650	34,906	36,903	35,294	36,390	35,631	2.08	6.9
MASSACHUSETTS	56,829	44,877	44,877	45,075	58,053	45,924	45,924	46,127	2.33	7.2
NEW HAMPSHIRE	45,187	37,405	37,405	37,405	46,161	38,162	38,162	38,162	2.02	6.2
RHODE ISLAND	51,689	50,262	50,396	50,322	52,803	52,166	52,305	52,228	3.79	16.8
VERMONT	37,081	37,496	36,062	36,800	37,880	38,014	36,560	37,308	1.38	3.7
MID EAST	50,223	48,056	49,755	48,704	51,410	49,173	50,979	49,636	1.91	9.4
DELAWARE	44,916	43,026	43,330	43,164	45,884	43,920	44,230	44,061	2.08	6.5
DISTRICT OF COLUMBIA	42,974	47,640	46,404	47,150	43,900	48,630	47,368	48,130	2.08	1.1
MARYLAND	44,873	41,620	43,592	42,526	45,840	42,405	44,414	43,328	1.89	-3.8
NEW JERSEY	54,342	50,088	53,079	51,193	55,513	51,048	54,096	52,174	1.92	17.9
NEW YORK	50,300	48,785	50,744	49,437	51,384	49,511	51,499	50,173	1.49	3.9
PENNSYLVANIA	49,566	48,157	48,781	48,457	51,086	50,338	51,212	49,765	2.70	20.4
SOUTH EAST	37,065	35,434	36,422	35,817	38,046	36,551	37,541	36,936	3.12	9.3
ALABAMA	36,740	35,820	35,820	35,820	37,532	36,564	36,564	36,564	2.08	18.8
ARKANSAS	32,879	31,445	33,220	32,350	33,587	32,199	34,017	33,126	2.40	19.5
FLORIDA	37,048	35,916	35,916	35,916	37,846	36,662	36,662	36,662	2.08	2.6
GEORGIA	41,591	39,076	40,532	39,675	42,487	40,703	42,220	41,327	4.16	19.0
KENTUCKY	37,251	35,076	36,580	35,526	38,054	35,846	37,383	36,306	2.20	11.4
LOUISIANA	33,943	32,510	32,510	32,510	34,674	33,186	33,186	33,186	2.08	10.1
MISSISSIPPI	30,743	29,129	30,056	29,530	31,405	29,735	30,681	30,144	2.08	0.1
NORTH CAROLINA	37,279	35,919	36,399	36,098	39,590	38,146	38,657	38,336	6.20	10.9
SOUTH CAROLINA	36,217	34,240	35,110	34,506	36,997	35,915	36,828	36,194	4.89	7.2
TENNESSEE	37,491	36,109	37,545	36,500	38,299	36,998	38,470	37,399	2.46	11.5
VIRGINIA	38,265	36,255	39,426	37,475	39,089	37,067	40,309	38,314	2.24	-0.1
WEST VIRGINIA	35,451	33,961	34,842	34,244	36,215	34,667	35,566	34,956	2.08	23.4
GREAT LAKES	45,014	43,169	45,014	43,634	46,151	44,364	46,279	44,850	2.79	9.9
ILLINOIS	47,312	43,655	50,140	45,569	48,331	46,893	51,562	46,861	2.84	15.2
INDIANA	42,501	41,328	40,997	41,163	43,417	42,262	41,923	42,093	2.26	9.9
MICHIGAN	48,207	48,207	48,207	48,207	49,246	49,209	49,209	49,209	2.08	7.0
OHIO	41,986	40,184	41,335	40,566	43,600	41,800	43,000	42,200	4.03	9.0
WISCONSIN	43,507	40,423	44,161	40,657	44,444	41,263	45,079	41,502	2.08	4.9
PLAINS	37,385	35,326	36,074	35,687	38,155	36,150	36,923	36,523	2.34	5.1
IOWA	36,209	34,143	35,588	34,927	36,989	34,988	36,468	35,791	2.47	7.9
KANSAS	39,690	37,405	37,405	37,405	40,340	38,527	38,527	38,527	3.00	8.1
MINNESOTA	40,707	39,816	39,092	39,458	41,584	40,643	39,904	40,278	2.08	0.9
MISSOURI	36,512	34,208	35,293	34,746	37,299	35,014	36,125	35,565	2.36	5.9
NEBRASKA	36,571	32,880	32,880	32,880	37,359	33,473	33,473	33,473	1.80	5.8
NORTH DAKOTA	29,215	29,199	28,571	28,976	29,844	29,838	29,196	29,610	2.19	3.7
SOUTH DAKOTA	29,387	28,610	28,422	28,552	30,020	29,204	29,012	29,145	2.08	10.3
SOUTH WEST	37,367	33,984	35,042	34,462	38,208	34,799	35,949	35,314	2.47	5.1
ARIZONA	45,785	35,025	35,025	35,025	46,771	35,650	35,650	35,650	1.78	-2.2
NEW MEXICO	33,714	32,242	32,786	32,398	34,810	32,724	33,774	32,937	1.66	7.3
OKLAHOMA	32,783	30,969	31,343	31,149	33,489	31,612	31,994	31,796	2.08	11.1
TEXAS	36,999	34,388	35,703	35,041	37,796	35,303	36,653	35,973	2.66	5.5
ROCKY MOUNTAINS	36,123	34,912	35,358	35,125	37,139	35,739	36,220	35,980	2.43	6.6
COLORADO	39,421	37,901	38,150	38,025	40,270	38,700	38,955	38,827	2.11	1.8
IDAHO	35,643	34,167	33,954	34,063	37,055	35,520	35,299	35,412	3.96	19.7
MONTANA	30,034	30,979	32,150	31,356	31,551	31,623	32,819	32,008	2.08	2.9
UTAH	33,982	33,007	32,887	32,950	34,714	33,693	33,571	33,635	2.08	14.5
WYOMING	34,683	33,714	33,302	33,500	35,633	34,500	34,100	34,300	2.39	-1.7
FAR WEST	45,113	43,632	44,457	43,905	46,113	44,549	45,406	44,830	2.11	0.2
ALASKA	48,085	46,845	46,845	46,845	49,121	47,262	47,262	47,262	0.89	-11.7
CALIFORNIA	46,593	44,763	47,262	45,400	47,597	45,694	48,245	46,344	2.08	-1.6
HAWAII	41,547	39,871	39,871	40,377	42,442	40,699	40,699	41,216	2.08	3.7
NEVADA	41,007	38,552	39,338	38,883	41,891	39,353	40,155	39,691	2.08	4.6
OREGON	43,142	42,496	42,805	42,833	44,072	43,379	43,694	43,723	2.08	14.3
WASHINGTON	40,596	38,723	38,651	38,692	41,471	39,528	39,454	39,496	2.08	4.6

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C-16. PERCENT CHANGE IN AVERAGE SALARIES OF PUBLIC SCHOOL TEACHERS, 1988-89 TO 1989-90

1. NEW HAMPSHIRE	8.6
2. CONNECTICUT	8.3
3. LOUISIANA	8.1
4. NORTH CAROLINA	8.1
5. NEW JERSEY	8.0
6. MARYLAND	8.0
7. MISSISSIPPI	7.9
8. MAINE	7.8
9. NEBRASKA	7.0
10. FLORIDA	6.8
11. VIRGINIA	6.8
12. PENNSYLVANIA	6.7
13. VERMONT	6.3
14. NEW YORK	6.2
15. SOUTH CAROLINA	6.2
16. NEVADA	6.1
17. MASSACHUSETTS	6.1
18. DELAWARE	5.7
19. TENNESSEE	5.6
UNITED STATES	5.4
20. KENTUCKY	5.4
21. RHODE ISLAND	5.3
22. ILLINOIS	5.3
23. OHIO	5.2
24. NEW MEXICO	5.1
25. CALIFORNIA	5.0
26. MINNESOTA	5.0
27. IDAHO	5.0
28. OREGON	4.9
29. KANSAS	4.8
30. MISSOURI	4.7
31. DIST. OF COL.	4.6
32. WASHINGTON	4.4
33. WEST VIRGINIA	4.3
34. HAWAII	4.1
35. COLORADO	4.1
36. INDIANA	4.0*
37. UTAH	3.9
38. IOWA	3.8
39. SOUTH DAKOTA	3.8
40. WISCONSIN	3.7
41. TEXAS	3.7
42. GEORGIA	3.6
43. NORTH DAKOTA	3.4
44. MICHIGAN	3.4*
45. ALASKA	3.4
46. ARIZONA	3.2
47. OKLAHOMA	3.1
48. ARKANSAS	2.9
49. MONTANA	2.7
50. WYOMING	1.8
51. ALABAMA	1.2
MEAN	5.4
MEDIAN	5.0
RANGE	7.4
SDEV.	0.7
CV	13.0

Computed from NEA Research, Estimates data bank.

\*Data estimated by NEA.

C-17. ESTIMATED AVERAGE SALARIES OF INSTRUCTIONAL STAFF IN PUBLIC SCHOOLS, 1988-89 (REVISED)

1. ALASKA	\$42,813*
2. DIST. OF COL.	42,310
3. CONNECTICUT	38,708
4. MASSACHUSETTS	38,419
5. NEW YORK	38,100
6. CALIFORNIA	35,882
7. MICHIGAN	35,741*
8. RHODE ISLAND	35,564
9. MARYLAND	35,072
10. NEW JERSEY	34,827
11. DELAWARE	32,736
12. WISCONSIN	32,500
13. ILLINOIS	32,207
14. ARIZONA	31,985
15. HAWAII	31,945
16. MINNESOTA	31,750
17. PENNSYLVANIA	31,555
UNITED STATES	30,969
18. OHIO	30,934
19. OREGON	30,680
20. COLORADO	30,614
21. WASHINGTON	30,525
22. INDIANA	30,357
23. NEVADA	30,150
24. GEORGIA	29,752*
25. VIRGINIA	29,655
26. KANSAS	29,248
27. WYOMING	28,844
28. FLORIDA	28,697
29. MONTANA	28,415
30. TEXAS	27,565
31. NEW HAMPSHIRE	27,448*
32. VERMONT	27,265*
33. MISSOURI	27,020
34. NORTH CAROLINA	26,833
35. SOUTH CAROLINA	26,762
36. IOWA	26,590
37. TENNESSEE	26,512
38. ALABAMA	26,150
39. KENTUCKY	26,026
40. MAINE	25,779
41. NEBRASKA	25,335
42. NEW MEXICO	25,003
43. UTAH	23,955
44. IDAHO	23,640
45. MISSISSIPPI	23,297
46. OKLAHOMA	23,200
47. LOUISIANA	23,150
48. NORTH DAKOTA	22,994
49. WEST VIRGINIA	22,897
50. ARKANSAS	22,193
51. SOUTH DAKOTA	21,250
MEAN	30,969
MEDIAN	29,248
RANGE	21,568
SDEV.	7461.4
CV	24.1

NEA Research, Estimates data bank.

C-18. ESTIMATED AVERAGE SALARIES OF INSTRUCTIONAL STAFF AS PERCENT OF NATIONAL AVERAGE, 1988-89 (REVISED)

1. ALASKA	138.3*
2. DIST. OF COL.	136.6
3. CONNECTICUT	125.0
4. MASSACHUSETTS	124.1
5. NEW YORK	123.0
6. CALIFORNIA	115.9
7. MICHIGAN	115.4*
8. RHODE ISLAND	114.8
9. MARYLAND	113.2
10. NEW JERSEY	111.8
11. DELAWARE	105.7
12. WISCONSIN	104.9
13. ILLINOIS	104.0
14. ARIZONA	103.3
15. HAWAII	103.2
16. MINNESOTA	102.5
17. PENNSYLVANIA	101.9
UNITED STATES	100.0
18. OHIO	99.9
19. OREGON	99.1
20. COLORADO	98.9
21. WASHINGTON	98.6
22. INDIANA	98.0
23. NEVADA	97.4
24. GEORGIA	96.1*
25. VIRGINIA	95.8
26. KANSAS	94.4
27. WYOMING	93.1
28. FLORIDA	92.7
29. MONTANA	91.8
30. TEXAS	89.0
31. NEW HAMPSHIRE	88.6*
32. VERMONT	88.0*
33. MISSOURI	87.2
34. NORTH CAROLINA	86.6
35. SOUTH CAROLINA	86.4
36. IOWA	85.9
37. TENNESSEE	85.6
38. ALABAMA	84.4
39. KENTUCKY	84.0
40. MAINE	83.2
41. NEBRASKA	81.8
42. NEW MEXICO	80.7
43. UTAH	77.4
44. IDAHO	76.3
45. MISSISSIPPI	75.2
46. OKLAHOMA	74.9
47. LOUISIANA	74.8
48. NORTH DAKOTA	74.2
49. WEST VIRGINIA	73.9
50. ARKANSAS	71.7
51. SOUTH DAKOTA	68.6
MEAN	100.0
MEDIAN	94.4
RANGE	69.7
SDEV.	24.1
CV	24.1

Computed from NEA Research, Estimates data bank.

**State of Alaska**  
**Department of Education and Early Development**  
**Average Age of School Facilities**

<b>YEAR</b>	<b>AGE</b>
1990	19
1992	20
1994	22
1996	23
1998	24
2000	26

## Examples of Teacher Incentives Offered in Other States

- **Increased Salaries**

- Maryland-10%

- Virginia-\$90 million over 2 years

- New York City-15% increase for teachers in schools on academic watch list

- Detroit-\$3000 for high-need subject areas

- Los Angeles-\$5000 for bilingual

- **Scholarship-loan Programs**

- Virginia-\$3000 forgivable loans

- North Carolina-\$6500 annually, requiring 4 years of teaching after graduation (3 if they work in "low performance" schools)

- **Signing Bonuses**

- Massachusetts-\$20,000 over 4 years for 150 teachers in urban areas

- Virginia-\$1000 for hard-to-fill areas

- Maryland-for top graduates

- Texas-\$3000 for special education

- Philadelphia-\$4500 for teachers who stay for 3 years

- **Tax Exemptions**

- California-proposed exemption from state income tax for certificated teachers

- **Student Performance Bonuses**

- California-proposed \$5000 bonus for each teacher in a school with student test score improvement of 20%; lesser amounts for lower improvement rates

- **Low Interest Home Mortgages**

- Maryland

- California-for teachers to live within school boundaries

- **Double Dipping**

- Maryland-retired teachers who return to classroom can continue to draw pension

P:\tcert\state board\other state' incentives

- **Continuing Education**

- Ohio-\$1.8 million for 30 math and science teachers who commit to 3 years in the district to obtain master's degrees

- Many States and Districts-mentoring programs for new teachers

- **Miscellaneous Goodies**

- Various States and Districts-laptop computers, gym memberships, 401Ks, moving costs

"A tax exemption or signing bonuses may not be the right answer here. But when states from New York to California are wading into a teacher bidding war, Oregon had better offer something more than scenery" *Portland Oregonian*, May 2000

**Alaska Department of Education & Early Development**  
**Public School Funding Formula Review**  
**FY90 - FY00**

- FY88 public school funding formula was revised to instructional unit method.
- FY93 the base of the public school funding formula increased 1.7% or approximately \$12 million.
- FY99 public school funding formula was revised to students per school method.
- FY99 the base of the public school funding program increased 3.3% or approximately \$21 million.
- From FY90 to FY00 enrollment increased 25% and the legislature fully funded the increase.
- From FY90 to FY00 inflation has increased approximately 30% but the public school funding program was increased 5% during this time.
- Property values and federal impact aid increased in FY01 and FY02 reducing the state share by \$29 million.
- Property values statewide should continue to increase 2% to 5% annually.
- From FY90 to FY00 municipalities have increased local contributions to education by 55% or \$98 million.



School District	\$5,830 Basic Need	Minimum Required Local Effort	Eligible Federal Impact Aid Total prior to applying %	Impact AID Percent	Deductible Impact AID 90%	BSA State AID	Quality Schools	FY2015 Total State Entitlement
Alaska Gateway	8,092,506	0	82,551	100.00%	74,296	8,018,210	22,209	8,040,419
Aleutian Region	1,429,341	0	44,956	100.00%	40,460	1,388,881	3,923	1,392,804
Aleutians East	5,708,678	615,358	1,330,928	47.94%	574,242	4,519,078	15,667	4,534,745
Anchorage	432,483,392	97,578,452	19,406,835	47.75%	8,340,087	326,564,853	1,186,918	327,751,771
Annette Island	5,456,531	0	1,899,443	100.00%	1,709,499	3,367,032	13,932	3,380,964
Bering Strait	39,853,997	0	12,800,474	100.00%	11,520,427	28,333,570	109,376	28,442,946
Bristol Bay	2,419,217	829,813	107,668	58.34%	56,532	1,532,872	6,639	1,539,511
Chatham	3,824,247	0	151,821	100.00%	136,639	3,687,608	10,495	3,698,103
Chugach	2,658,305	0	33,252	100.00%	29,927	2,628,378	7,296	2,635,674
Copper River	6,488,382	0	324,428	100.00%	291,985	6,196,397	17,807	6,214,204
Cordova	4,522,040	808,972	23,668	45.86%	9,769	3,703,299	12,410	3,715,709
Craig	5,452,099	342,223	400,634	58.73%	211,763	4,898,113	14,963	4,913,076
Delta/Greely	10,167,403	0	375,971	100.00%	338,374	9,829,029	27,904	9,856,933
Denali	7,501,519	660,233	0	29.77%	0	6,841,286	20,587	6,861,873
Dillingham	7,253,628	545,947	92,995	41.39%	34,642	6,673,039	19,907	6,692,946
Fairbanks	153,023,450	27,829,166	14,927,254	55.14%	7,407,799	117,786,485	419,961	118,206,446
Galena	24,261,370	80,477	200,312	6.61%	11,917	24,168,976	66,584	24,235,560
Haines	3,879,923	1,015,859	0	65.15%	0	2,864,064	10,648	2,874,712
Hoonah	2,579,075	194,633	171,477	35.34%	54,540	2,329,902	7,078	2,336,980
Hydaburg	1,611,354	40,600	401,276	28.52%	103,000	1,467,754	4,422	1,472,176
Iditarod Area	6,114,912	0	47,392	100.00%	42,653	6,072,259	16,782	6,089,041
Juneau	50,969,183	12,964,812	0	52.35%	0	38,004,371	139,881	38,144,252
Kake	2,150,920	76,124	420,296	57.77%	218,524	1,856,272	5,903	1,862,175
Kashunamiut	5,625,892	0	2,300,858	100.00%	2,070,772	3,555,120	15,440	3,570,560
Kenai Peninsula	102,772,173	23,612,200	0	53.20%	0	79,159,973	282,051	79,442,024
Ketchikan Gateway	26,820,973	4,438,076	0	56.08%	0	22,382,897	73,608	22,456,505
Klawock	2,795,368	143,391	613,490	67.01%	369,990	2,281,987	7,672	2,289,659
Kodiak Island	31,215,044	4,016,219	2,065,580	30.52%	567,374	26,631,451	85,667	26,717,118
Kuspuk	8,091,865	0	1,304,773	100.00%	1,174,296	6,917,569	22,208	6,939,777
Lake & Peninsula	9,550,065	378,755	1,372,215	36.14%	446,327	8,724,983	26,209	8,751,192
Lower Kuskokwim	77,139,528	0	20,109,999	100.00%	18,098,999	59,040,529	211,704	59,252,233
Lower Yukon	42,007,540	0	12,426,665	100.00%	11,183,999	30,823,541	115,287	30,938,828
Mat-Su	181,059,512	25,982,579	0	50.04%	0	155,076,933	496,904	155,573,837
Nenana	7,266,046	77,614	42	72.80%	28	7,188,404	19,941	7,208,345
Nome	9,483,195	1,004,049	76,001	44.18%	30,220	8,448,926	26,026	8,474,952
North Slope	30,751,151	13,412,099	4,770,090	36.91%	1,584,576	15,754,476	84,394	15,838,870
Northwest Arctic	39,588,382	1,972,985	6,317,425	27.03%	1,536,840	36,078,557	108,647	36,187,204
Pelican *	415,329	32,148	0	98.47%	0	383,181	75,188	458,369
Petersburg	6,799,412	854,814	0	44.55%	0	5,944,598	18,660	5,963,258
Pribilof	2,031,055	0	458,188	100.00%	412,369	1,618,686	5,574	1,624,260
Saint Mary's	3,757,901	35,341	0	22.16%	0	3,722,560	10,313	3,732,873
Sitka	16,779,148	3,081,916	12,780	58.00%	6,671	13,690,561	46,049	13,736,610
Skagway	1,195,208	525,411	0	45.86%	0	669,797	3,280	673,077
Southeast Island	5,597,675	0	30	100.00%	27	5,597,648	15,362	5,613,010
Southwest Region	12,711,441	0	4,173,904	100.00%	3,756,514	8,954,927	34,886	8,989,813
Tanana	1,114,405	24,675	164,204	89.92%	132,887	956,843	3,058	959,901
Unalaska	5,898,852	1,490,964	18,954	51.94%	8,860	4,399,028	16,189	4,415,217
Valdez	7,886,183	3,425,807	2,025	38.56%	703	4,459,673	21,643	4,481,316
Wrangell	3,987,545	542,378	3,388	80.25%	2,447	3,442,720	10,944	3,453,664
Yakutat	1,548,740	197,852	138,061	36.56%	45,428	1,305,460	4,250	1,309,710
Yukon Flats	7,610,307	0	932,789	100.00%	839,510	6,770,797	20,886	6,791,683
Yukon/Koyukuk	14,728,154	0	1,119,530	100.00%	1,007,577	13,720,577	40,420	13,760,997
Yupit	9,367,236	0	3,254,374	100.00%	2,928,937	6,438,299	25,708	6,464,007
Mt. Edgecumbe	4,133,353	0	124,818	100.00%	112,336	4,021,017	11,344	4,032,361
TOTALS:	1,467,250,150	228,831,942	115,003,814		77,524,762	1,160,893,446	4,100,804	1,191,021,550

\* Pelican's "floor" is rolled into Quality Schools.

School District	FY15 ADM	FY15 Corresp. ADM	FY15 Total ADM	Before School Size Adjust HH	School Size ADM; HH included where eligb.	District Cost Factor	Adjusted for Cost Factor	Special Needs Factor 1.20	CTE Factor 1.015	SPED Intsv.	Adjust for SPED Intsv *13.00	Students + Intensive Special Education	District Corresp 90%	District Adjusted ADM
Alaska Gatewr	304.70	68.50	373.20	562.68	562.68	1.594	896.91	1076.29	1092.43	18	234	1326.43	61.65	1388.08
Aleutian Regic	37.00	0.00	37.00	87.30	87.30	1.939	169.27	203.12	206.17	3	39	245.17	0.00	245.17
Aleutians East	218.40	0.00	218.40	382.58	393.06	1.991	782.58	939.10	953.19	2	26	979.19	0.00	979.19
Anchorage	46747.92	813.68	47561.60	51637.18	51637.18	1.000	51637.18	61964.62	62894.09	812	10556	73450.09	732.31	74182.40
Annette Island	295.52	61.90	357.42	428.33	428.33	1.338	573.11	687.73	698.05	9	117	815.05	55.71	870.76
Bering Strait	1657.60	0.00	1657.60	2691.53	2691.53	1.998	5377.68	6453.22	6550.02	22	286	6836.02	0.00	6836.02
Bristol Bay	116.50	6.50	123.00	195.79	220.04	1.478	325.22	390.26	396.11	1	13	409.11	5.85	414.96
Chatham	169.20	0.00	169.20	314.63	314.63	1.576	495.86	595.03	603.96	4	52	655.96	0.00	655.96
Chugach	60.55	215.65	276.20	143.72	143.72	1.496	215.01	258.01	261.88	0	0	261.88	194.09	455.97
Copper River	382.10	55.45	437.55	584.49	630.75	1.316	830.07	996.08	1011.02	4	52	1063.02	49.91	1112.93
Cordova	324.50	2.50	327.00	462.67	462.67	1.234	570.93	685.12	695.40	6	78	773.40	2.25	775.65
Craig	285.05	279.40	564.45	414.06	430.06	1.206	518.65	622.38	631.72	4	52	683.72	251.46	935.18
Delta/Greely	720.39	85.98	806.37	964.97	964.97	1.241	1197.53	1437.04	1458.60	16	208	1666.60	77.38	1743.98
Denali	208.27	681.57	889.84	354.96	366.93	1.332	488.75	586.50	595.30	6	78	673.30	613.41	1286.71
Dillingham	465.30	2.80	468.10	614.65	614.65	1.346	827.32	992.78	1007.67	18	234	1241.67	2.52	1244.19
Fairbanks	13536.32	233.79	13770.11	15539.63	15539.63	1.070	16627.41	19952.89	20252.18	445	5785	26037.18	210.41	26247.59
Galena	300.70	3845.50	4146.20	409.26	413.47	1.391	575.14	690.17	700.52	0	0	700.52	3460.95	4161.47
Haines	258.54	9.60	268.14	383.55	404.94	1.200	485.93	583.12	591.87	5	65	656.87	8.64	665.51
Hoonah	112.20	0.00	112.20	189.38	190.95	1.399	267.14	320.57	325.38	9	117	442.38	0.00	442.38
Hydaburg	70.00	0.00	70.00	115.40	115.40	1.504	173.56	208.27	211.39	5	65	276.39	0.00	276.39
Iditarod Area	207.90	106.15	314.05	412.44	412.44	1.846	761.36	913.63	927.33	2	26	953.33	95.54	1048.87
Juneau	4753.15	54.50	4807.65	5469.28	5469.28	1.145	6262.33	7514.80	7627.52	82	1066	8693.52	49.05	8742.57
Kake	109.70	0.00	109.70	185.66	185.66	1.459	270.88	325.06	329.94	3	39	368.94	0.00	368.94
Kashunamiut	317.15	0.00	317.15	449.80	449.80	1.619	728.23	873.88	886.99	6	78	964.99	0.00	964.99
Kenai Peninsu	8132.88	694.99	8827.87	10453.55	10453.55	1.171	12241.11	14689.33	14909.67	161	2093	17002.67	625.49	17628.16
Ketchikan Gat	2143.70	82.45	2226.15	2656.24	2656.24	1.170	3107.80	3729.36	3785.30	57	741	4526.30	74.21	4600.51
Klawock	122.95	0.00	122.95	205.40	220.38	1.302	286.93	344.32	349.48	10	130	479.48	0.00	479.48
Kodiak Island	2341.61	102.00	2443.61	2929.56	2929.56	1.289	3776.20	4531.44	4599.41	51	663	5262.41	91.80	5354.21
Kuspuk	345.90	0.00	345.90	632.12	632.56	1.734	1096.86	1316.23	1335.97	4	52	1387.97	0.00	1387.97
Lake & Penins	304.55	11.50	316.05	649.87	654.15	1.994	1304.38	1565.26	1588.74	3	39	1627.74	10.35	1638.09
Lower Kuskok	4109.40	0.00	4109.40	6083.08	6083.08	1.663	10116.16	12139.39	12321.48	70	910	13231.48	0.00	13231.48
Lower Yukon	2019.15	0.00	2019.15	3041.17	3041.17	1.861	5659.62	6791.54	6893.41	24	312	7205.41	0.00	7205.41
Mat-Su	15825.94	1931.50	17757.44	18166.89	18166.89	1.070	19438.57	23326.28	23676.17	434	5642	29318.17	1738.35	31056.52
Nenana	176.50	801.35	977.85	272.21	298.28	1.338	399.10	478.92	486.10	3	39	525.10	721.22	1246.32
Nome	685.60	13.75	699.35	869.85	869.85	1.450	1261.28	1513.54	1536.24	6	78	1614.24	12.38	1626.62
North Slope	1738.56	0.00	1738.56	2376.25	2376.25	1.791	4255.86	5107.03	5183.64	7	91	5274.64	0.00	5274.64
Northwest Arc	1929.82	11.80	1941.62	2830.93	2830.93	1.823	5160.79	6192.95	6285.84	38	494	6779.84	10.62	6790.46
Pelican	11.35	0.00	11.35	39.60	39.60	1.477	58.49	70.19	71.24	0	0	71.24	0.00	71.24
Petersburg	431.85	0.00	431.85	623.87	623.87	1.244	776.09	931.31	945.28	17	221	1166.28	0.00	1166.28
Pribilof	82.10	0.00	82.10	158.13	162.83	1.691	275.35	330.42	335.38	1	13	348.38	0.00	348.38
Saint Mary's	197.60	0.00	197.60	306.15	306.15	1.624	497.19	596.63	605.58	3	39	644.58	0.00	644.58
Sitka	1277.27	37.25	1314.52	1570.27	1570.27	1.195	1876.47	2251.76	2285.54	43	559	2844.54	33.53	2878.07
Skagway	84.00	0.00	84.00	134.28	134.28	1.174	157.64	189.17	192.01	1	13	205.01	0.00	205.01
Southeast Islar	189.88	0.30	190.18	447.41	455.20	1.403	638.65	766.38	777.88	14	182	959.88	0.27	960.15
Southwest Reg	588.75	0.00	588.75	982.14	1005.37	1.685	1694.05	2032.86	2063.35	9	117	2180.35	0.00	2180.35
Tanana	38.50	0.00	38.50	68.47	75.92	1.786	135.59	162.71	165.15	2	26	191.15	0.00	191.15
Unalaska	395.60	0.00	395.60	539.45	539.45	1.441	777.35	932.82	946.81	5	65	1011.81	0.00	1011.81
Valdez	595.01	7.15	602.16	807.86	807.86	1.170	945.20	1134.24	1151.25	15	195	1346.25	6.44	1352.69
Wrangell	271.75	0.00	271.75	400.32	420.05	1.159	486.84	584.21	592.97	7	91	683.97	0.00	683.97
Yakutat	89.05	8.25	97.30	140.69	150.14	1.412	212.00	254.40	258.22	0	0	258.22	7.43	265.65
Yukon Flats	240.00	0.00	240.00	460.18	481.27	2.116	1018.37	1222.04	1240.37	5	65	1305.37	0.00	1305.37
Yukon/Koyuki	287.00	1168.99	1455.99	547.77	572.33	1.835	1050.23	1260.28	1279.18	15	195	1474.18	1052.09	2526.27
Yupit	453.65	0.00	453.65	728.45	728.45	1.723	1255.12	1506.14	1528.73	6	78	1606.73	0.00	1606.73
Mt. Edgecumb	416.85	0.00	416.85	487.10	487.10	1.195	582.08	698.50	708.98	0	0	708.98	0.00	708.98

TOTALS: 117,185.43 11,394.75 128,580.18 142,603.20 142,903.10 171,599.42 205,919.32 209,008.10 2,493 32,409 241,417.10 10,255.28 251,672.41

School District	2013 Full Values	FY14 Basic Need (for 45% requirement)	.00265 x 2013 Full Value	45% of Prior Year Basic Need	Required Minimum Local Effort [Lesser of .00265 or 45%]
Alaska Gateway	-	7,767,059	-	0	-
Aleutian Region	-	1,283,907	-	0	-
Aleutians East	232,210,400	5,578,271	615,358	2,510,222	615,358
Anchorage	36,822,057,280	421,828,040	97,578,452	189,822,618	97,578,452
Annette Island	-	4,394,843	-	0	-
Bering Strait	-	38,564,871	-	0	-
Bristol Bay	313,136,900	2,492,782	829,813	1,121,752	829,813
Chatham	-	3,119,570	-	0	-
Chugach	-	2,544,413	-	0	-
Copper River	-	6,518,652	-	0	-
Cordova	305,272,290	4,243,301	808,972	1,909,485	808,972
Craig	129,140,800	5,220,090	342,223	2,349,041	342,223
Delta/Greely	-	9,829,467	-	0	-
Denali	249,144,600	6,836,562	660,233	3,076,453	660,233
Dillingham	206,017,600	7,245,067	545,947	3,260,280	545,947
Fairbanks	10,501,572,030	150,773,101	27,829,166	67,847,895	27,829,166
Galena	30,368,700	20,756,310	80,477	9,340,340	80,477
Haines	383,343,200	3,873,362	1,015,859	1,743,013	1,015,859
Hoonah	73,446,500	2,408,831	194,633	1,083,974	194,633
Hydaburg	15,320,600	1,494,010	40,600	672,305	40,600
Iditarod Area	-	5,656,258	-	0	-
Juneau	4,892,381,900	50,131,226	12,964,812	22,559,052	12,964,812
Kake	28,725,900	1,935,914	76,124	871,161	76,124
Kashunamiut	-	5,338,746	-	0	-
Kenai Peninsula	8,910,264,290	97,611,766	23,612,200	43,925,295	23,612,200
Ketchikan Gateway	1,674,745,500	25,947,546	4,438,076	11,676,396	4,438,076
Klawock	54,109,700	2,620,752	143,391	1,179,338	143,391
Kodiak Island	1,515,554,400	30,205,104	4,016,219	13,592,297	4,016,219
Kuspuk	-	7,368,778	-	0	-
Lake & Peninsula	142,926,600	9,134,406	378,755	4,110,483	378,755
Lower Kuskokwim	-	73,423,770	-	0	-
Lower Yukon	-	39,568,073	-	0	-
Mat-Su	9,804,746,930	169,151,309	25,982,579	76,118,089	25,982,579
Nenana	29,288,300	6,296,791	77,614	2,833,556	77,614
Nome	378,886,400	9,443,114	1,004,049	4,249,401	1,004,049
North Slope	19,302,423,290	29,804,664	51,151,422	13,412,099	13,412,099
Northwest Arctic	744,522,600	37,799,321	1,972,985	17,009,694	1,972,985
Pelican	12,131,300	404,643	32,148	182,089	32,148
Petersburg	322,571,500	6,678,771	854,814	3,005,447	854,814
Pribilof	-	2,002,541	-	0	-
Saint Mary's	13,336,300	3,736,077	35,341	1,681,235	35,341
Sitka	1,162,987,200	16,471,602	3,081,916	7,412,221	3,081,916
Skagway	343,739,500	1,167,581	910,910	525,411	525,411
Southeast Island	-	5,146,137	-	0	-
Southwest Region	-	12,711,386	-	0	-
Tanana	9,311,300	1,141,510	24,675	513,680	24,675
Unalaska	562,628,000	5,798,712	1,490,964	2,609,420	1,490,964
Valdez	3,050,015,630	7,612,904	8,082,541	3,425,807	3,425,807
Wrangell	204,671,000	4,074,434	542,378	1,833,495	542,378
Yakutat	74,661,300	1,666,285	197,852	749,828	197,852
Yukon Flats	-	7,645,166	-	0	-
Yukon/Koyukuk	-	13,475,800	-	0	-
Yup'it	-	8,947,704	-	0	-
Mt. Edgecumbe	-	3,903,864	-	0	-
<b>TOTALS:</b>	<b>102,495,659,740</b>	<b>1,410,795,164</b>	<b>271,613,498</b>	<b>518,212,872</b>	<b>228,831,942</b>

School District	FY2015 Basic Need	Additional Local .002 Mills of Current F/V	23% of Basic Need + HB278 \$43M grant outside + Quality Schools AADM	Additional Local Contribution [Greater of .002 or 23% subtotal]	MAXIMUM LOCAL: Required plus additional Local Contribution
Alaska Gateway	8,092,506	-	-	-	-
Aleutian Region	1,429,341	-	-	-	-
Aleutians East	5,708,678	464,421	1,355,037	1,355,037	1,970,395
Anchorage	432,483,392	73,644,115	102,656,173	102,656,173	200,234,625
Annette Island	5,076,531	-	-	-	-
Bering Strait	39,853,997	-	-	-	-
Bristol Bay	2,419,217	626,274	574,236	626,274	1,456,087
Chatham	3,824,247	-	-	-	-
Chugach	2,658,305	-	-	-	-
Copper River	6,488,382	-	-	-	-
Cordova	4,522,040	610,545	1,073,371	1,073,371	1,882,343
Craig	5,452,099	258,282	1,294,134	1,294,134	1,636,357
Delta/Greely	10,167,403	-	-	-	-
Denali	7,501,519	498,289	1,780,594	1,780,594	2,440,827
Dillingham	7,253,628	412,035	1,721,753	1,721,753	2,267,700
Fairbanks	153,023,450	21,003,144	36,322,324	36,322,324	64,151,490
Galena	24,261,370	60,737	5,758,786	5,758,786	5,839,263
Haines	3,879,923	766,686	920,956	920,956	1,936,815
Hoonah	2,579,075	146,893	612,181	612,181	806,814
Hydaburg	1,611,354	30,641	382,478	382,478	423,078
Iditarod Area	6,114,912	-	-	-	-
Juneau	50,969,183	9,784,764	12,098,271	12,098,271	25,063,083
Kake	2,150,920	57,452	510,552	510,552	586,676
Kashunamiut	5,625,892	-	-	-	-
Kenai Peninsula	102,772,173	17,820,529	24,394,458	24,394,458	48,006,658
Ketchikan Gateway	26,820,973	3,349,491	6,366,345	6,366,345	10,804,421
Klawock	2,795,368	108,219	663,521	663,521	806,912
Kodiak Island	31,215,044	3,031,109	7,409,341	7,409,341	11,425,560
Kuspuk	8,091,865	-	-	-	-
Lake & Peninsula	9,550,065	285,853	2,266,846	2,266,846	2,645,601
Lower Kuskokwim	77,139,528	-	-	-	-
Lower Yukon	42,007,540	-	-	-	-
Mat-Su	181,059,512	19,609,494	42,977,088	42,977,088	68,959,667
Nenana	7,266,046	58,577	1,724,701	1,724,701	1,802,315
Nome	9,483,195	757,773	2,250,973	2,250,973	3,255,022
North Slope	30,751,151	38,604,847	7,299,229	38,604,847	52,016,946
Northwest Arctic	39,588,382	1,489,045	9,396,874	9,396,874	11,369,859
Pelican	415,329	24,263	98,584	98,584	130,732
Petersburg	6,799,412	645,143	1,613,939	1,613,939	2,468,753
Pribilof	2,031,055	-	-	-	-
Saint Mary's	3,757,901	26,673	891,992	891,992	927,333
Sitka	16,779,148	2,325,974	3,982,773	3,982,773	7,064,689
Skagway	1,195,208	687,479	283,700	687,479	1,212,890
Southeast Island	5,597,675	-	-	-	-
Southwest Region	12,711,441	-	-	-	-
Tanana	1,114,405	18,623	264,520	264,520	289,195
Unalaska	5,898,852	1,125,256	1,400,178	1,400,178	2,891,142
Valdez	7,886,183	6,100,031	1,871,899	6,100,031	9,525,838
Wrangell	3,987,545	409,342	946,502	946,502	1,488,880
Yakutat	1,548,740	149,323	367,616	367,616	565,468
Yukon Flats	7,610,307	-	-	-	-
Yukon/Koyukuk	14,728,154	-	-	-	-
Yup'it	9,367,236	-	-	-	-
Mt. Edgecumbe	4,133,353	-	-	-	-
<b>TOTALS:</b>	<b>1,467,250,150</b>	<b>204,991,322</b>	<b>283,531,925</b>	<b>319,521,492</b>	<b>548,353,434</b>

Schedule A: 23% of Basic Need + HB278 \$43M grant outside + Quality Schools.

School District	FY2015 Basic Need	HB278 \$43M grant AADM outside	Quality Schools \$16xAADM	23% of Basic Need + HB278 \$43M grant outside + Quality Schools	
				AADM	
Alaska Gateway	8,092,506	236,907	22,209	-	
Aleutian Region	1,429,341	41,844	3,923	-	
Aleutians East	5,708,678	167,121	15,667	-1,355,037	
Anchorage	432,483,392	12,660,878	1,186,918	102,656,173	
Annette Island	5,076,531	148,615	13,932	-	
Bering Strait	39,853,997	1,166,719	109,376	-	
Bristol Bay	2,419,217	70,822	6,639	574,236	
Chatham	3,824,247	111,954	10,495	-	
Chugach	2,658,305	77,821	7,296	-	
Copper River	6,488,382	189,946	17,807	-	
Cordova	4,522,040	132,382	12,410	1,073,371	
Craig	5,452,099	159,609	14,963	1,294,134	
Delta/Greely	10,167,403	297,649	27,904	-	
Denali	7,501,519	219,606	20,587	1,780,594	
Dillingham	7,253,628	212,349	19,907	1,721,753	
Fairbanks	153,023,450	4,479,736	419,961	36,322,324	
Galena	24,261,370	710,248	66,584	5,758,786	
Haines	3,879,923	113,584	10,648	920,956	
Hoonah	2,579,075	75,502	7,078	612,181	
Hydaburg	1,611,354	47,172	4,422	382,478	
Iditarod Area	6,114,912	179,013	16,782	-	
Juneau	50,969,183	1,492,114	139,881	12,098,271	
Kake	2,150,920	62,968	5,903	510,552	
Kashunamiut	5,625,892	164,697	15,440	-	
Kenai Peninsula	102,772,173	3,008,638	282,051	24,394,458	
Ketchikan Gateway	26,820,973	785,179	73,608	6,366,345	
Klawock	2,795,368	81,834	7,672	663,521	
Kodiak Island	31,215,044	913,815	85,667	7,409,341	
Kuspuk	8,091,865	236,888	22,208	-	
Lake & Peninsula	9,550,065	279,577	26,209	2,266,846	
Lower Kuskokwim	77,139,528	2,258,247	211,704	-	
Lower Yukon	42,007,540	1,229,764	115,287	-	
Mat-Su	181,059,512	5,300,487	496,904	42,977,088	
Nenana	7,266,046	212,712	19,941	1,724,701	
Nome	9,483,195	277,619	26,026	2,250,973	
North Slope	30,751,151	900,235	84,394	7,299,229	
Northwest Arctic	39,588,382	1,158,943	108,647	9,396,874	
Pelican	415,329	12,159	1,140	98,584	
Petersburg	6,799,412	199,052	18,660	1,613,939	
Pribilof	2,031,055	59,459	5,574	-	
Saint Mary's	3,757,901	110,012	10,313	891,992	
Sitka	16,779,148	491,207	46,049	3,982,773	
Skagway	1,195,208	34,990	3,280	283,700	
Southeast Island	5,597,675	163,871	15,362	-	
Southwest Region	12,711,441	372,125	34,886	-	
Tanana	1,114,405	32,624	3,058	264,520	
Unalaska	5,898,852	172,688	16,189	1,400,178	
Valdez	7,886,183	230,867	21,643	1,871,899	
Wrangell	3,987,545	116,735	10,944	946,502	
Yakutat	1,548,740	45,339	4,250	367,616	
Yukon Flats	7,610,307	222,790	20,886	-	
Yukon/Koyukuk	14,728,154	431,164	40,420	-	
Yupit	9,367,236	274,224	25,708	-	
Mt. Edgecumbe	4,133,353	121,000	11,344	-	
TOTALS:	1,467,250,150	42,953,500	4,026,756	283,531,925	

