

# MEMORANDUM

## State of Alaska Department of Law

TO: Members, State Board of Education and Early Development

THRU: Heidi Teshner, Acting Commissioner  
Department of Education and Early Development

FROM: Susan Sonneborn  
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SUBJECT: Attorney General's Report

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

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

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

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

Kuspuk School District has discontinued its use of the building as of January 31, 2022. Due to DOT&PF funding and allocation decisions, the demolition of the building is now expected to occur in the summer of 2024. The parties must still resolve the allocation of responsibility for cleanup costs for PCBs that may exist in the slab and under the building, cleanup costs for TCE, and the administrative costs of DEC. Starting on February 9, 2023 Jennifer Currie, Chief AAG for the Environmental Section, will conduct monthly teleconference calls with counsel for all parties to try to get them to agree on apportioning the liability for TCE. If those calls fail to result in an agreement on apportioning liability, the parties may resort to mediation. AAG Gene Hickey in the Public Corporations & Governmental Services Section is handling this matter.

2. *In the matter of Alaska Department of Education and Early Development Predetermination Proceeding.* On March 3, 2021, the Department submitted to the U.S. Department of Education (US-Ed) its disparity test along with attachments and formal notice, in accord with 20 USC 7009(c)(1)(A), that it intended to consider federal Impact Aid payments when allocating state aid to school districts. The disparity test measures the disparity among state aid revenues available to the school districts in the state. In order for the state to consider federal impact aid payments (and reduce state aid accordingly) there can be no more than 25% disparity among school districts, discounting the highest and lowest 5%. US-Ed recently requested for the first time that DEED include transportation costs in its disparity test submission.

US-Ed held a telephonic predetermination hearing on June 8, 2021. The department filed a written response to the issues raised by US-Ed at the hearing on June 24, 2021, arguing that transportation costs should not be included in the state's disparity test. On June 30, 2021, US-Ed distributed its decision concluding that Alaska does not meet the disparity test federal requirements and that, as a result, the state is not eligible to consider a portion of impact aid payments as local resources in determining state aid entitlements for the period of July 1, 2021 through June 30, 2022. DEED requested a hearing on this decision on August 27, 2021, and the matter was assigned to an administrative law judge and briefing ordered.

On November 15, 2021, DEED submitted to US-Ed a revised alternative fiscal analysis for consideration. The federal administrative law judge thereafter granted the parties' joint motion to stay the scheduling order, which has been extended several times. The parties engaged in extensive communication about the data and on September 26, 2022 US-Ed issued a report finding that the revised data meets the disparity test. On October 17, 2022 the parties filed a joint motion to dismiss the case and on December 30, 2022 the administrative law judge ordered that the case be dismissed with prejudice.

3. *Alexander et al. v. Acting Commissioner Heidi Teshner, State of Alaska, Department of Education & Early Development.* On January 24, 2023 individual teachers

and parents of students enrolled in Alaska school districts filed suit in superior court against Acting Commissioner Heidi Teshner in her official capacity, State of Alaska, Department of Education & Early Development. Plaintiffs alleged in their complaint that the statutes implementing the correspondence study program are unconstitutional on their face and as applied. The complaint referenced the July 25, 2022 Deputy Attorney General opinion on whether publicly funded correspondence schools can pay for services from private schools.

On January 26, 2023 parents of students enrolled in correspondence study programs who have used program allotments to fund private school tuition filed a motion to intervene in the case as defendants. These parents alleged in their motion that they are entitled to intervene as the intended beneficiaries of the allotment program because their rights are not adequately represented by the existing parties. On February 2, 2023 the plaintiffs filed a non-opposition to the motion to intervene and on February 3, 2023 the state filed its own non-opposition. On February 10, 2023 the court granted the motion to intervene. Chief AAG Margaret Paton-Walsh has primary responsibility for this case.