

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

EDWARD ALEXANDER, JOSH
ANDREWS, SHELBY BECK
ANDREWS, and CAREY CARPENTER,

Plaintiffs,

vs.

STATE OF ALASKA, DEPARTMENT
OF EDUCATION & EARLY
DEVELOPMENT and
COMMISSIONER DEENA BISHOP, in
her official capacity,

Defendants,

ANDREA MOCERI, THERESA
BROOKS, and BRANDY
PENNINGTON,

Intervenor-Defendants.

Case No.: 3AN-23-04309CI

MOTION TO AMEND COMPLAINT AND JOIN PARTIES

Pursuant to Alaska Rules of Civil Procedure 15 and 19, Plaintiffs Edward Alexander, Josh Andrews, Shelby Beck Andrews, and Carey Carpenter, move the court for permission to amend their Complaint and join additional parties as defendants in this proceeding. The additional defendants are the Anchorage School District, Matanuska-Susitna Borough School District, Denali Borough School District, and Galena City

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School District (herein, the “School District Defendants”). The proposed First Amended Complaint is attached as Exhibit A to this Motion.

This Motion is made on the following showing of good cause. This court initially granted summary judgment to Plaintiffs that statutes governing uses of homeschool allotment funds (AS 14.03.300-.310) are facially unconstitutional, primarily because they explicitly allow for reimbursement of tuition paid to private schools. In an expedited appeal, the Alaska Supreme Court reversed and remanded the case back to this court on the bases that:

1. Because the statutes also allow for purchases at private businesses that are *not* private educational institutions, they are not facially unconstitutional and have a “plainly legitimate sweep”;¹

2. The Superior Court did not rule on the issue of whether AS 14.03.300-.310, which authorize “correspondence study programs” can even be interpreted to allow the use of allotment funds to pay private school tuition at all, regardless of constitutional restrictions;² and

3. In order to rule on the narrower “as applied” question of whether reimbursing private school tuition via allotment funds under these statutes violates the Alaska Constitution, an “entity that took the allegedly unconstitutional action...” must be

¹ *State of Alaska, DEED et al. v. Edward Alexander, et al.*, Supreme Court Nos. S-19083/S-19113, Order of 6/28/2024 at page 4.

² *Id* at 5.

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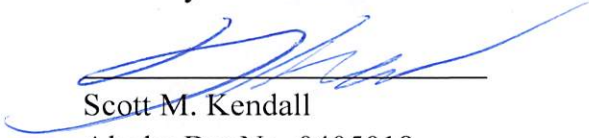
“a party to the lawsuit.” The Court further determined that “it is school districts, not the State” that authorize particular uses of allotment funds, and therefore a district must be joined before this issue is reached.³

Plaintiffs’ Motion to Amend the Complaint and Join Parties seeks nothing more than to cure the issues specifically identified by the Alaska Supreme Court in its Summary Order remanding the case back to this court for further proceedings. Counsel for Plaintiffs contacted counsel for Defendants and Intervenor-Defendants regarding this Motion. Counsel for Intervenor-Defendants informed undersigned counsel that they do not oppose this Motion. Counsel for Defendants did not take a position on this Motion.

Therefore, for good cause shown, Plaintiffs respectfully request that in the interest of justice, Plaintiffs’ First Amended Complaint be accepted for filing pursuant to Alaska Rules of Civil Procedure 15(a) and (b), that summons be issued for the School District Defendants, and that Plaintiffs be allowed to serve and join the School District Defendants as parties to this action.

DATED: February 6, 2025

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³ *Id.* at 6.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via email on February 6, 2025, on the following:

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By: /s/ Todd Cowles

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EDWARD ALEXANDER, JOSH
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ANDREWS, and CAREY CARPENTER,

Plaintiffs,

vs.

STATE OF ALASKA, DEPARTMENT
OF EDUCATION & EARLY
DEVELOPMENT, COMMISSIONER
DEENA BISHOP, in her official
capacity, ANCHORAGE SCHOOL
DISTRICT, MATANUSKA-SUSITNA
BOROUGH SCHOOL DISTRICT,
DENALI BOROUGH SCHOOL
DISTRICT, and GALENA CITY
SCHOOL DISTRICT,

Defendants,

ANDREA MOCERI, THERESA
BROOKS, and BRANDY
PENNINGTON,

Intervenor-Defendants.

Case No. 3AN-23-04309CI

PROPOSED
FIRST AMENDED COMPLAINT

Plaintiffs Edward Alexander, Josh Andrews, Shelby Beck Andrews, and Carey Carpenter, hereby file this First Amended Complaint against Defendants State of Alaska, Department of Education & Early Development (“DEED”), Commissioner Deena Bishop

PROPOSED FIRST AMENDED COMPLAINT

Alexander, et al., v. State Dept. of Education & Early Dev., et al., 3AN-23-04309CI

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Exhibit A

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in her official capacity, the Anchorage School District, the Matanuska-Susitna Borough School District, the Denali Borough School District, and the Galena City School District by stating and alleging the following:

I. INTRODUCTION

1. Article VII, Section 1 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, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.”

2. This suit challenges the use of the public correspondence program allotments provided by AS 14.03.300-.310 to reimburse purchases of thousands of dollars of tuition, classes, and materials at private educational institutions thereby funding private education with public funds in violation of Article VII, Section 1 of the Alaska Constitution.

3. Alaska Statute 14.03.300(a) provides that under a “correspondence study program” an “individual learning plan” is “developed in collaboration with the student, the parent or guardian of the student, a certified teacher assigned to the student, and other individuals involved in the student’s learning plan.” To meet “instructional expenses,” AS 14.03.310(a) allows a school district or DEED to “provide an annual student allotment to a parent or guardian of a student enrolled in the correspondence study program.” “A

parent or guardian may purchase nonsectarian services and materials from a public, private, or religious organization with a student allotment” if they are consistent with the “individual learning plan.” AS 14.03.310(b). As the legislative history and plain text make clear, a “private, or religious organization” includes a private school.

4. The relevant language in AS 14.03.300-.310 was initially proposed in Senate Bill 100 (“SB 100”) in 2013. SB 100 was accompanied by Senate Joint Resolution No. 9 (“SJR 9”) to amend Article VII, Section 1 of the Alaska Constitution by deleting the final sentence providing, “No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.”

5. Senate Bill 100’s sponsor, then-Senator Michael J. Dunleavy, acknowledged that a constitutional amendment was necessary to allow for the use of public funds for the direct benefit of private educational institutions as intended by SB 100. For example, he explained in Senate Education Committee meetings that amending the constitutional language was required so that parents could enroll their children in private school courses as part of the individual learning plan (“ILP”). In providing this explanation, Dunleavy stated: “That cannot be done currently under constitutional language.” Sen. Educ. Comm., 28th Leg., April 10, 2013 at 8:29:15 AM, <https://www.akleg.gov/PDF/28/M/SEDC2013-04-100801.PDF>.

6. Senator Dunleavy’s statement was clear that as a package, “SB 100, along with SJR 9, allow[] a parent and teacher to develop an ILP that includes a public/private partnership concept.” *Id.*

7. Although Article VII, Section 1 of the Alaska Constitution was never amended, the language authorizing an allotment of public funds be spent on the purchase of services and materials from private educational institutions, was nonetheless enacted in AS 14.03.300-.310 as part of larger legislation.

8. More than 22,000 Alaska students are currently enrolled in the public correspondence program. The public funding allocated to correspondence schools in fiscal year 2024 amounted to \$119,559,805.

9. Before offering a correspondence program, school districts must apply and receive approval from DEED. DEED provides the public funding to school districts offering a correspondence program. The amount of public funding to provide to each school district is calculated by DEED using the foundation formula: Base Student Allocation (“BSA”) multiplied by 90% multiplied by the Adjusted Daily Membership (“ADM”).

10. In May 2022, Jodi Taylor, wife of Attorney General Treg Taylor, authored an opinion piece titled “Private school, state reimbursement: Family choice,” explaining how parents can take advantage of AS 14.03.310 by enrolling their children in the public correspondence program to receive thousands of dollars in state funds to reimburse payments for private school tuition.

11. This opinion piece raised questions regarding the constitutionality of spending public education funds to reimburse private school tuition and other private school expenses under AS 14.03.300-.310.

12. DEED has the responsibility of advising school districts regarding how to comply with Alaska law, including the Alaska Constitution. The State of Alaska Department of Law (“Department of Law”) provides legal opinions to DEED addressing questions of statutory interpretation and constitutional requirements.

13. On July 25, 2022, the Department of Law issued a legal opinion to DEED evaluating the constitutionality of correspondence school allotment expenditures under AS 14.03.300-.310. This legal opinion discussed different uses of the allotments at private educational institutions and categorized them on a spectrum from “almost certainly unconstitutional” to “likely constitutional.”

14. This legal opinion provided murky guidance to school districts that spending public education funds, which are provided via DEED to school districts, at private educational institutions might be constitutional, leaving school districts to consult with legal counsel.

15. This opinion concluded that “using the student allotments to pay for the tuition of a student being educated full-time at a private institution would be highly unlikely to survive constitutionality scrutiny.” The opinion, however, did not definitively state that school districts offering correspondence programs may not approve the use of public allotment funds to pay for private school tuition under AS 14.03.300-.310 without running afoul of the Alaska Constitution.

16. The opinion noted that passing the allotment money through a parent or guardian did not change the constitutional analysis, which is “why the Department of Law

has consistently advised legislators and agencies that school voucher programs allowing parents to pay for public or private schools are not permitted under the Alaska Constitution.”

17. Interpreting and applying AS 14.03.300-.310 to authorize a publicly funded allotment be spent to subsidize private school tuition is in substance an unconstitutional shadow voucher program. Yet, DEED claims to have no knowledge whether school districts operating correspondence programs, which DEED has approved of, are using public funds to pay for private school tuition. DEED could request this information from school districts operating correspondence programs, but has not done so.

18. The Department of Law’s opinion noted that in addition to the expenditure of public funds for full-time private school tuition, allotments could be used for some number of classes at private educational institutions, and that these expenditures fall into a “grey area.”

19. If the parents of just 10% of the students enrolled in the public correspondence program simultaneously enrolled their students in private schools, and then requested reimbursements for private school tuition with their allotments, under the 2024 Base Student Allotment (“BSA”) of \$5,960, this would result in millions dollars of public funds being diverted from public schools for the direct benefit of private educational institutions.

20. Similarly, using the public correspondence program allotments to purchase courses, materials, and curriculum from private educational institutions on less than a

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full-time basis would still provide a direct benefit for education conducted at private schools.

21. In interpreting the direct benefit prohibition in Article VII, Section 1, the Alaska Supreme Court has been clear that diverting public funds to subsidize private education is unconstitutional, including when those funds are channeled through an intermediary. Reimbursing parents for private school courses, tuition, and educational materials with public funds is exactly the channeling of funds the Alaska Supreme Court has held is prohibited.

22. Because AS 14.03.300-.310 as interpreted and applied by the State via DEED, and some school districts, is allowing the public correspondence program to reimburse parents thousands of dollars for private educational institution services and materials with public funds, in violation of Article VII, Section 1 of the Alaska Constitution, Plaintiffs are entitled to declaratory and injunctive relief to prevent this unconstitutional diversion of funds that are meant to benefit the public education system and public-school students in Alaska.

II. PARTIES

23. Plaintiff Edward Alexander is an Enrolled Tribal Member of the Gwichyaa Zhee Gwich'in Tribal Government from Fort Yukon, Alaska. Edward is a father of five, and currently lives in Fairbanks, Alaska. Three of Edward's children attend Weller Elementary School in Fairbanks. Edward has seen public schools in his district close, which has resulted in larger class sizes at Weller Elementary. Edward takes an active role

in his children's education, including homeschooling several of his children during the COVID-19 pandemic. Edward has testified with his children at School Board Meetings to advocate for maintaining public education programs in the arts in the face of budgetary cuts. He is passionate about ensuring that all students in Alaska have access to quality public educational opportunities including in language and the arts. Edward has worked to advance this goal over the course of his career in his capacity as a teacher, principal, and language coordinator for Fort Yukon. From 2016 to 2020, Edward was the Education Manager for the Tanana Chiefs Conference, overseeing education programs for 42 Tribes of the Interior. He is currently co-chair of Gwich'in Council International, and a homemaker. Mr. Alexander's wife is a physician and Medical Director of the Tanana Chiefs Conference.

24. Plaintiff Josh Andrews is a teacher who was born and raised in Southeast Alaska, and he is proud to call Craig, Alaska home. Josh comes from a long line of teachers including his parents, grandparents, and even one of his great grandparents. Josh attended elementary school in a Regional Educational Attendance Area in a one-room schoolhouse at a logging camp, and subsequently attended Haines Middle and High Schools. Josh has more than 25-years of teaching experience, and has taught subjects from music to technology to math at the middle and high school levels. Josh also has 5 years of experience as a high school principal. Public education has always been a cornerstone of Josh's life, and he is honored to be a public school teacher in Craig. Josh

Andrews is married to plaintiff Shelby Beck Andrews, and they are parents of two children who attend Craig public schools.

25. Plaintiff Shelby Beck Andrews moved to Alaska with her parents when she was just two-weeks old, and is a graduate of Haines High School. From 2003-2009, Shelby taught at Craig Middle School. In 2009, Shelby began teaching at Craig High School. She has taught a variety of subjects to meet the needs of the school and her students, including social studies, history, economics, language arts, and Spanish. Shelby believes it is imperative that there is adequate funding for public schools to provide the best public education for all students throughout Alaska. Shelby reads the plain text of the Alaska Constitution as prohibiting public funds from being diverted from public schools, where they are needed to provide teachers and quality educational programs. Due to budgetary restrictions, Shelby has witnessed public schools in her district struggle to attract and retain a physical education teacher. For high school students, there are limited scheduling options such that students, like her daughter, may have to choose between registering for academic courses or music. As both a teacher and a parent, Shelby wants to see public schools fully funded for the benefit of all Alaskans.

26. Plaintiff Carey Carpenter is a married mother-of-two who has called Alaska home for 25 years. Her children are currently in 9th and 11th grade in the Anchorage School District. Carey is a registered Civil Engineer, and previously worked for the Alaska Native Tribal Health Consortium as a project manager and design engineer for Alaska Native communities in rural Alaska, primarily working on water and sewage

systems. After undergoing treatment and surviving an aggressive form of breast cancer, Carey quit her civil engineering job to start a local nonprofit to support other young adults who are diagnosed with cancer. In her current volunteer role, she serves as the Director of this nonprofit: Anchorage Young Cancer Coalition. Carey began taking an active role in advocating on behalf of Anchorage students in 2016 after the principal of her children's school unilaterally decided to cut the lunch and recess time for all students without discussing this change with students or their parents. As part of her advocacy for students, she worked with another Anchorage parent to start a grassroots parent group called ASD60. ASD60 fought for evidence-based and CDC-backed guidelines for adequate lunch and recess time for children across the Anchorage School District. This year, Carey has been involved in advocating for the State Legislature to increase school funding to avoid further cuts to public education programs. Anchorage public education programs including IGNITE, sports, and language immersion, that her children have participated in, have faced the prospect of dramatic changes and cuts based on budgetary issues. Carey strongly believes that funneling public funds away from public schools to subsidize private education diminishes her children's educational opportunities and is illegal under the Alaska Constitution.

27. Defendant Commissioner Deena Bishop of the Office of the Commissioner, State of Alaska, Department of Education & Early Development ("DEED") is being sued in her official capacity.

28. Defendant DEED provides and oversees core public education services, including public school funding; fiscal accountability, compliance, and oversight; school effectiveness programs; and active partnerships. Specifically, DEED is responsible for ensuring that education funding is appropriately distributed to recipients—such as school districts—based on legislative appropriation and by statute and in accordance with the foundation formula, other formula programs, or legislative intent for funding outside the primary formulas.

29. DEED has the duty of exercising general supervision over the public schools of the state, including elementary and secondary correspondence study programs. DEED also has the authority to offer and make available a correspondence study program to any Alaskan through a centralized office. DEED has the responsibility of determining how much state funding is due to each school district, including funding due to districts providing correspondence programs. DEED is obligated to follow the Alaska Constitution, including Article VII, Section 1, in performance of these duties.

30. Defendant Anchorage School District (“ASD”) offers a statewide correspondence program, AKChoice K-12 Learning (formerly known as PAIDEIA Cooperative School), as well as Family Partnership Correspondence School and Frontier Charter School, which are district programs. Family Partnership Correspondence School advertises on its website that it offers the highest allotments in the state.

31. In prior years ASD programs allowed reimbursement of tuition via allotment funds for full-time enrollment in private school. However, in 2023 ASD issued

guidance to its correspondence programs that they would not be permitted to reimburse full-time tuition to private school with the allotments, but programs could reimburse for courses or materials from private schools with half or less of the allotment. As of March 2024, ASD had 2,004 total students enrolled in its three correspondence programs.

32. Defendant Matanuska-Susitna Borough School District (“Mat-Su Borough School District”) offers two district correspondence programs—Twindly Bridge Charter School and Knik Charter School—and a statewide correspondence program, Mat-Su Central School. Mat-Su Central School includes private and religious educational institutions on its approved vendor list (sometimes also referred to as instructional partners) where allotments may be spent. Mat-Su Central’s allotments are currently \$2,600 to \$3,000 per student per year depending on grade level.

33. According to Mat-Su Central’s Principal Stacey McIntosh, Mat-Su’s correspondence program allotments may be used to reimburse for classes at private schools and the program has done so for years. There is no limit on the amount of the allotment at Mat-Su Central that may be used to reimburse private school expenses. Mat-Su Central School is now the largest school in the district, with more than 2,000 students enrolled.

34. Defendant Denali Borough School District (“Denali”) operates the Denali PEAK statewide correspondence program. According to the Denali PEAK 2023-2024 Handbook, “Denali PEAK will accept students concurrently enrolled in a private school in Alaska,” and “[d]epending on the course and partnership with the private school,

individual courses may be included on the [Culturally Responsive Educational Work-plan (CREW)] and may be reimbursed.” The program accepts students from kindergarten through to 12th grade. Denali PEAK maintains offices in Anchorage, Mat-Su Valley, and Healy.

35. As of the 2022-2023 school year, 740 students were enrolled in Denali PEAK. Denali PEAK provides correspondence program allotments ranging from \$2,000 to \$3,200 per student depending on grade level for the 2024-2025 school year.

36. Defendant Galena City School District (“Galena”) operates Interior Distance Education of Alaska (“IDEA”) which is a statewide correspondence program. IDEA advertises the fact that students enrolled in their program “may take classes at a private school” and receive and use their partial or full allotment of public funds to pay tuition at such a private educational institution. IDEA advertises the full-time allotment amount they will pass through to families as \$2,700 per year, per K-12 student.

37. IDEA enrollment has continued to rise and is currently believed to have nearly 7,500 students, making it the largest school in Alaska by enrollment.

38. Intervenor Theresa Brooks is a resident of Eagle River, Alaska. Ms. Brooks is the adoptive parent of one child, L.B. For the 2022-2023 school year, L.B. received an allotment in the amount of \$3,950 from the Family Partnership Charter School via AS 14.03.300-.310. This amount paid for half of L.B.’s tuition at St. Elizabeth Ann Seaton School (“SEAS”) in Anchorage. Ms. Brooks used the correspondence program allotment during the 2023-2024 school year to pay for L.B.’s private school tuition. Ms. Brooks

intends to continue sending L.B. to private school using the correspondence program allotment to pay for tuition so long as such program is available.

39. Intervenor Brandy Pennington is a resident of Anchorage, Alaska. Four of her children attend SEAS, and she has been sending her children to SEAS since 2015. During the 2022-2023 school year, Ms. Pennington's children received allotments in amounts up to \$3,950 from the Family Partnership Charter School via the correspondence program allotment in AS 14.03.300-.310. Ms. Pennington intends to continue using the correspondence allotment to send her children to private schools. This allotment weighs heavily in Ms. Pennington's decision to send her children to private school, and she would face financial hardship in sending her children to private schools without the financial subsidy provided by the allotment.

40. Intervenor Andrea Mocerri is a resident of Anchorage, Alaska. Her son attends Holy Rosary Academy in Anchorage while being enrolled in the public correspondence study program. During the 2022-2023 school year, Ms. Mocerri's son received an allotment of \$4,500 from the Family Partnership Charter School, which paid for half of her son's tuition at Holy Rosary Academy. Ms. Mocerri used the allotment during the 2023-2024 school year to send her son to private school, and intends to continue using the allotment to pay for private school tuition. Ms. Mocerri would almost certainly be unable to afford the tuition at Holy Rosary Academy without the correspondence program allotment, or would endure great financial hardship in

continuing to pay private school tuition without the allotment covering approximately half of the tuition.

III. JURISDICTION AND VENUE

41. This court has jurisdiction over this dispute, as well as the ability to enter a declaratory judgment and provide injunctive relief, under AS 22.10.020.

42. Venue is proper in the Third Judicial District as Defendants maintain offices and may be served within Anchorage, Alaska, and the claims arise from actions that have and will take place, in part, within the Third Judicial District.

IV. FACTUAL ALLEGATIONS

Correspondence Programs, Public Funding, and the Role of DEED and School Districts

43. Either a school district or DEED may establish a public correspondence program. Before offering a correspondence study program, school districts must apply and receive approval to operate a correspondence study program from DEED. A school district may not operate a public correspondence program without DEED's approval.

44. DEED has the authority to provide a correspondence study program, although it does not currently do so. AGO No. 2021200228 at 4 n.13 (July 25, 2022); *see also* AS 14.03.300(a) (providing a "district or the department that provides a correspondence study program" shall provide an individual learning plan).

45. All current correspondence programs are district-provided. Twenty-nine out of fifty-four school districts offer correspondence schools. Some school districts offer

more than one correspondence program. As of April 2024, there were a total of 36 correspondence schools within 29 districts, and 34 of those correspondence school programs had enrolled students or teachers associated with the programs.

46. There are two categories of district-provided programs: statewide programs and district programs. Fifteen school districts including the Anchorage School District, Denali Borough School District, Mat-Su Borough School District, and Galena City School District provide statewide programs (meaning students outside the district’s geographic boundaries may enroll in their correspondence program). Anchorage School District and Mat-Su Borough School District also offer correspondence programs that are district programs.

47. The State provides public education funding for the correspondence study program. DEED distributes this public funding to school districts for their correspondence programs. This funding is an allocation from the public education fund in an amount calculated by multiplying the average daily membership (“ADM”) of the correspondence program (which is the average number of enrolled students during the 20-school day count period) by 90 percent. *See* AS 14.17.430. For Fiscal Year 2024, this amount was 90% of the BSA of \$5,960 (which totals \$5,364).

48. During the 2023-2024 school year, full-time student enrollment in correspondence schools was more than 22,200 students. In Fiscal Year 2024, public funding allocated to the correspondence program amounted to \$119,559,805.

49. Once the funds are distributed by the State via DEED to school districts, school districts generally regulate the funds by establishing an allotment account for each participating family. Families do not have direct access to these accounts. Instead, parents typically submit their requests for purchases from approved vendors or for reimbursements to their correspondence program or school district.

50. DEED receives information from school districts about their correspondence programs through the Online Alaska School Information System (“OASIS”) and through the correspondence school application and approval process. School districts must submit an assurance agreement to DEED to operate a school district correspondence program within the State of Alaska.

51. DEED is mandated to “exercise general supervision over elementary and secondary correspondence study programs offered by municipal school districts or regional educational attendance areas,” *see* AS 14.07.020(a)(9), and correspondence study programs must conform with statewide goals and standards as established by DEED.

52. DEED monitors the correspondence study program via reporting requirements that apply to the school districts. DEED has established minimum high school graduation requirements in regulation, which may be met through public correspondence schools. *See* 4 AAC 06.075.

53. If a school district is found to have knowingly violated regulations, DEED may withdraw approval for the district to operate a correspondence study program.

54. Alaska Statute 14.03.300(a) provides that under the “correspondence study program” an “individual learning plan” is “developed in collaboration with the student, the parent or guardian of the student, a certified teacher assigned to the student, and other individuals involved in the student’s learning plan.”

55. To meet “instructional expenses,” AS 14.03.310(a) allows a school district or DEED to “provide an annual student allotment to a parent or guardian of a student enrolled in the correspondence study program.” “A parent or guardian may purchase nonsectarian services and materials from a public, private, or religious organization with a student allotment” if they are consistent with the “individual learning plan.” AS 14.03.310(b).

56. Jodi Taylor’s May 19, 2022 opinion piece, “Private school, state reimbursement: Family choice,” was published in multiple newspapers, including the Anchorage Daily News. In this piece, Ms. Taylor explained how AS 14.03.310 allows parents of students enrolled in the public correspondence program to receive thousands of dollars in state funds to reimburse their children’s private school education.

57. Ms. Taylor’s opinion piece outlined the steps parents can use to enroll their children in the public correspondence (homeschooling) program, select the private school of their choice, and then receive reimbursements for that private school tuition from the annual correspondence student allotment. This approach is only possible because, under AS 14.03.310, correspondence study program funds may be used to purchase services from approved vendors, including private schools.

58. Jodi Taylor learned of AS 14.03.310 from Alaska Policy Forum Chief Executive Office Bethany Marcum. Ms. Marcum previously worked as a legislative staffer for Governor Mike Dunleavy when Dunleavy was a State Senator. *Id.*

Legislative History of AS 14.03.300-.310

59. Alaska Statute 14.03.300-.310's relevant statutory language was originally part of SB 100, which then-Senator Dunleavy sponsored. The bill went through several committee hearings, but the language eventually passed as part of House Bill 278.

60. Senator Dunleavy introduced SB 100 in 2013. In discussing “[p]ublic correspondence/homeschooling study programs” Dunleavy’s SB 100 sponsor statement noted, “[m]ost programs provide a student allotment to purchase educational services or materials to meet the student’s Individual Learning Plan (ILP). Under SB 100, a parent may purchase services and materials from a private or religious organization with a student allotment to meet the student’s ILP.” Sen. Educ. Comm., 28th Leg., March 3, 2014 at 8:01:20 AM, <https://www.akleg.gov/PDF/28/M/SEDC2014-03-030800.PDF>.

61. Statutes and regulations addressing the correspondence study program impact thousands of students in Alaska. As Senator Dunleavy also explained in his SB 100 sponsor statement: “Public correspondence/homeschool study programs serve almost 10 percent of the total Alaska student population. This approach to education is one of the fastest growing options in the state.” Sen. Educ. Comm., 28th Leg., March 3, 2014 at 8:01:20 AM, <https://www.akleg.gov/PDF/28/M/SEDC2014-03-030800.PDF>.

62. Dunleavy described the benefits of SB 100 as allowing “freedom and flexibility,” and to “focus on the outcomes, not the inputs.” Sen. Educ. Comm., 28th Leg., March 3, 2014 at 8:07:44 AM, <https://www.akleg.gov/PDF/28/M/SEDC2014-03-030800.PDF>.

63. As an exchange between Committee Chair Stevens and Senator Dunleavy confirmed, SB 100 would remove “the department’s oversight of financial expenditures and the ILP,” and “place[] the oversight with the district.” *Id.* at 8:17:38 AM. At the time Senator Dunleavy introduced SB 100, there were correspondence study programs offered by 33 different Alaska school districts. *Id.* at 8:01:20 AM (sponsor statement of Sen. Dunleavy).

64. Multiple Senators, including sponsoring Senator Dunleavy, noted that SB 100 presented constitutional issues because it allowed for the purchase of educational services from private educational institutions with public funds. This use of public funds would violate Article VII, Section 1 of the Alaska Constitution: “No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.”

65. For example, Senator Berta Gardner shared that “she has a legal opinion that [SB 100] is not constitutional,” and had requested her staff “transmit that opinion to the members of the committee and their staff.” Educ. Comm., 28th Leg., March 21, 2014 at 8:24:31 AM, <https://www.akleg.gov/PDF/28/M/SEDC2014-03-210759.PDF>.

66. Because he was aware of these constitutional issues, Senator Dunleavy originally presented SB 100 with Senate Joint Resolution No. 9 (“SJR 9”). SJR 9 was introduced on February 13, 2013, and “proposed amendments to the Constitution of the State of Alaska relating to state aid for education.” Sen. J. Res. 9, 28th Leg., <https://www.akleg.gov/PDF/28/Bills/SJR009A.PDF>.

67. SJR 9 proposed to delete the final sentence of Article VII, Section 1 of the Alaska Constitution: “No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.” *Id.* It simultaneously proposed to amend Article IX, Section 6, reading “No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose,” to add a clause “; however, nothing in this section shall prevent payment from public funds for the direct educational benefit of students as provided by law.” *Id.*

68. Dunleavy described SB 100 as “a companion bill for SJR 9.” Sen. Education Comm., 28th Leg., April 10, 2013 at 8:29:15 AM, <https://www.akleg.gov/PDF/28/M/SEDC2013-04-100801.PDF>. With the constitutional amendment of SJR 9 and SB 100, “a parent could decide his child would take a Latin course at Monroe Catholic and the teacher could agree to that in the ILP.” *Id.* Dunleavy asserted, “*That cannot be done currently* under constitutional language.” *Id.* (emphasis added).

69. Dunleavy presented the benefit of passing both SJR 9’s constitutional amendment and SB 100, as “allow[ing] a parent and a teacher to develop an ILP that includes a public/private partnership concept with a public outcome.” *Id.*

70. SJR 9 died in committee, and Article VII, Section 1 was never amended. However, relevant language from SB 100 was added to House Bill 278, which passed in 2014. *See* 2014 Alaska Sess. Laws Ch. 15, § 15. These provisions were enacted in AS 14.03.300-.310.

71. Just as SB 100 envisioned, AS 14.03.300-.310 purports to allow a parent or guardian to use their child’s annual public correspondence study program allotment to purchase materials and services from private educational institutions.

72. After Ms. Taylor’s opinion piece circulated, the use of public correspondence school allotments to pay for services offered by private educational institutions was challenged as violating the Alaska Constitution, which prompted the Alaska Department of Law to consider the issue.

The Department of Law Issues an Opinion Considering the Constitutionality of Spending Public Allotment Funds for Private Education.

73. On June 6, 2022, the Alaska Department of Law issued a press release explaining, “[a]s the Alaska Department of Law considers the legality of using public funds for private education costs, Alaska Attorney General Treg Taylor recused himself from all matters involving correspondence school allotments on May 21, 2022.” This press release acknowledged that “Taylor’s wife is an advocate for the idea and has

recently written a column on it.” Press Release (June 6, 2022), Attorney General Taylor Recused from Correspondence School Allotment Advice in May, <https://law.alaska.gov/press/releases/2022/060622-Allotment.html>.

74. There was a delegation of authority from Attorney General Treg Taylor to Deputy Attorney General Cori Mills regarding the matter of correspondence school allotments. State of Alaska, Online Public Notices, Delegation of Authority to Deputy Attorney General Cori Mills, (dated May 21, 2022) <https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=207008>.

75. On July 25, 2022, Alaska Deputy Attorney General Cori Mills released the Department of Law’s opinion on whether publicly funded correspondence schools can pay for services from private schools. *See* Press Release, Deputy Attorney General’s Opinion Provides Guidance to School Districts on Public Correspondence School Allotments and Private School Uses, July 25, 2022, <https://law.alaska.gov/press/releases/2022/072522-SchoolsOpinion.html>.

76. This legal opinion acknowledged that “[t]he allotment program supports students enrolled in public correspondence schools by permitting public money to be spent for certain materials and services from a private vendor to fulfill a student’s individual learning plan.” AGO No. 2021200228 at 1 (July 25, 2022). But concluded “[s]uch spending *does not*, on its face, violate the Alaska Constitution’s prohibition against spending public funds for the direct benefit of a private educational institution.”

Id.

77. Although nothing in the plain text of AS 14.03.300-.310 provides limits on spending under the correspondence program preventing constitutional violations, the opinion reasoned that “the Alaska Constitution does establish boundaries on how public money can be spent under the program.” *Id.* at 2. The opinion then proceeded to provide “guidance on the types of spending that are clearly constitutional, clearly unconstitutional, and those that fall into a gray area.” *Id.*

78. Rather than focusing on the plain language and whether public funds were being spent “for the direct benefit of any religious or other private educational institution,” this opinion suggested that the constitutional touchstone is whether the private classes support a student’s public education. *Id.* at 12-14.

79. The opinion stated, “there is a reasonable legal basis to conclude that allotments could be used” to pay for college classes “at *public* or *private* postsecondary institutions because both public and private colleges charge for tuition, making the public funds operate neutrally between the two forms of institutions.” *Id.* at 12.

80. Without any factual support explaining how much private colleges, or other private institutions, charge for courses, or how many “public” students are enrolled, the opinion concluded “the expenditures are likely to be relatively insubstantial and they primarily support district-supervised public correspondence instruction and thus do not implicate the core constitutional concern of using public funds to aid private education.” *Id.* at 12-13.

81. Yet again relying on the touchstone of intent in making the expenditure, this opinion also provided that “if attendance in private school classes is, for example, in response to a private school encouraging parents to enroll in a public correspondence school and then use public allotments to offset the cost of private tuition, there would be a significant likelihood that use of allotments would be found unconstitutional.” *Id.* at 14. Article VII, Section 1 contains no mention of intent.

82. The opinion further concluded that it is likely constitutional to purchase “certain materials” from private educational institutions, such as “textbooks, services, and other curriculum materials,” conceding that while this “may incidentally benefit the private institutions” it does not “implicate the core constitutional concern of using public funds to aid private education.” *Id.* at 12-13. This interpretation allows for the purchase of educational materials from private schools with a publicly funded student allotment.

83. However, the opinion left many of what it called “in between” or “gray area” situations to the discretion of school districts, suggesting using public funds for “one or two [private] classes to support a public correspondence school program is likely constitutional, whereas using public school allotment money to pay for most or all of a private school’s tuition would not be.” In this multitude of “gray area” situations that may or may not violate the Alaska Constitution, “DEED and school districts should consult with legal counsel.” *Id.* at 19.

84. This opinion does not delineate how school districts are to determine whether a specific number of private school classes would be constitutional, nor does it

address any limitation on the dollar value of services and materials that may be purchased at private educational institutions under its proposed “purpose” of spending test.

85. Acting Commissioner of DEED, Heidi Teshner, circulated a “Letter to Superintendents” on July 25, 2022, sharing the Department of Law’s legal opinion. This letter explained, “The Alaska Constitution supports using allotments to pay for educational services and materials provided by private vendors including paying for courses *when the main purpose of purchasing the services and materials is to further the student’s public school correspondence education*. What the constitution does not support is paying for sectarian or religious courses or supplanting the public education with a full private school education by paying the tuition for full-time enrollment in a private school.”

86. On April 15, 2024, Commissioner Deena Bishop sent a letter to school district superintendents addressing this litigation. This letter advised that “your school district may continue to administer its correspondence study program, including paying outstanding invoices.” This letter did not address any limits on spending allotments imposed by the Alaska Constitution or Alaska Administrative Code, including any limits on the hours of “scheduled face-to-face interaction” for secondary courses and elementary students in the correspondence study program. 4 AAC 09.990(a)(3); *see also* 4 AAC 33.490(17).

87. Upon information and belief, DEED Commissioner Deena Bishop has sent subsequent letters to superintendents addressing the correspondence program and

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correspondence program allotments, but these letters have not directed that a school district may not reimburse private school tuition or courses with correspondence program allotments. As of January 2025, the latest legal guidance on DEED’s website regarding appropriate uses of the allotments is still the 2022 Department of Law Opinion.

88. DEED, nonetheless, has taken the litigation position that AS 14.03.300-.310 does not permit the use of allotment funds to pay for tuition at a private school.

Correspondence Programs in School Districts

89. School districts rely on the State, via DEED and the Department of Law, for legal guidance regarding how to comply with Alaska law, including the Alaska Constitution. School districts providing correspondence study programs rely on legal guidance from the Department of Law and DEED regarding the constitutionality of expenditures of allotments under AS 14.03.300-.310.

90. Some school districts providing correspondence programs reimbursed expenditures at private educational institutions, including paying for private school tuition, with the allotment before the Department of Law issued its opinion, and some school districts providing correspondence programs have continued to do so.

Anchorage School District

91. Anchorage School District offers a statewide correspondence program, AKChoice K-12 Learning (formerly known as PAIDEIA Cooperative School), as well as Family Partnership Correspondence School and Frontier Charter School, which are

district programs. As of March 2024, ASD had 2,004 total students enrolled in its three correspondence programs.

92. Family Partnership Correspondence School advertises on its website that it offers the highest correspondence program allotments in the state: \$4,000 for grades K-5, \$4,250 for grades 6-8, and \$4,500 for grades 9-12. According to the Family Partnership Correspondence Program Profile available on DEED's website, 1,740 students were enrolled in the program during the 2022-2023 school year.

93. Frontier Charter School offers allotments of \$3,100 for K-8th grade, and of \$4,100 for 9-12th grades. To use the allotment at Frontier Charter School, parents may submit requests for requisitions or reimbursements (with documentation) via an online program called SALTT, consistent with the ILP. According to the Frontier Charter School Profile available on DEED's website, 447 students were enrolled in the program during the 2022-2023 school year.

94. AKChoice K-12 Learning offers allotments of \$1,800 for kindergarten, \$2,100 for 1st-5th grades, \$2,300 for 6th-8th grades, and either \$2,600 (living inside ASD) or \$2,900 (living outside ASD) for high school. AKChoice K-12 Learning offers homeschool, in-person, online, dually enrolled, vendor based, or a blend of these options. According to the AKChoice K-12 Learning Profile available on DEED's website, 172 students were enrolled in the program during the 2023-2023 school year.

95. Anchorage School District has relied on the Department of Law's positions regarding allotment expenditures, and ASD's Director of Charter Schools issued

guidance to ASD's home-school correspondence programs in June of 2023 "to clarify district and administrative procedure consistent with the Alaska Constitution, Alaska Statute, and the July 2022 Deputy Attorney General guidance as it relates to the appropriate implementation and use of student allotments and private school education."

96. This ASD guidance indicated that using an allotment to pay tuition for a student enrolled full-time at a private school would not be permitted by the ASD, and that more than half of a correspondence student's allotment may not be used to pay for private school tuition, materials, and fees for non-sectarian classes.

97. ASD's guidance permits a student enrolled in a public correspondence school to be reimbursed for up to half of the student's allotment to pay for part-time enrollment in courses at a private school.

98. Intervenors Brooks, Pennington, and Mocerri, as well as other parents, established ILPs with Family Partnership Charter School that reimbursed them for a substantial portion of their full-time tuition at private schools in Anchorage before ASD issued its 2023 guidance.

99. As a result of ASD issuing new guidance that allotments are not permitted to be used to reimburse full-time private school tuition, some families that had previously been reimbursed via the allotment for private school tuition moved their students to other correspondence programs that would continue to reimburse them for a portion of their private school tuition with the allotment.

Mat-Su Borough School District

100. A substantial portion of the total students enrolled in the Mat-Su Borough School District are enrolled in its correspondence programs, and Mat-Su Central School is now the largest school in the district.

101. According to the Mat-Su Central School Profile available on DEED's website, 2,257 students were enrolled in the program during the 2022-2023 school year. According to the Twindly Bridge Charter School Profile available on DEED's website, 584 students were enrolled in the program during the 2022-2023 school year. According to the Knik Charter School Profile available on DEED's website, 98 students were enrolled in the program during the 2022-2023 school year. Based on these figures, a total of 2,939 students were enrolled in correspondence programs offered by Mat-Su Borough School District during the 2022-2023 school year.

102. Mat-Su Central currently offers allotments ranging from \$2,600-\$3,000 depending on grade level. Mat-Su Central offers reimbursements for classes at approximately a dozen private schools, including a few private schools outside of the district. Mat-Su Central has a vetting process for private school classes, and a certified teacher of the correspondence program reviews the private school curriculum, and then Mat-Su Central provides a list of classes for each private school that Mat-Su Central will reimburse for.

103. Mat-Su Central does not limit the amount of allotment that may be used to reimburse private school classes, and a family may seek reimbursement up to the full

value of their allotment for private school classes. Parents must submit receipts showing that they purchased private school classes to receive reimbursement for those classes, and so Mat-Su Central knows that the funds were used at private schools before reimbursing parents.

104. Mat-Su Central School has over 2,300 students enrolled and is in the process of constructing a site plan and building that are scheduled to open in Spring 2025. This project is estimated to cost more than \$24 million dollars. In response to questions about “why a ‘homeschooling program’ needs a building,” Mat-Su Central posted on its website that this building is to host in-person workshops, clubs, and classes, and to provide space for over 300 partner businesses to meet with students and offer experiential learning.

Denali Borough School District

105. Denali Borough School District is one of the school districts offering a statewide correspondence program, Denali PEAK. Because Denali PEAK is a statewide program, Alaska students living outside the geographic boundaries of Denali Borough may still enroll in Denali PEAK.

106. Denali PEAK allows for concurrent enrollment in Denali PEAK and a private school according to its Handbook. Denali PEAK has partnerships with vendors, including private schools. Multiple private educational institutions are listed on Denali PEAK’s website as “Denali PEAK partners,” from whom parents may seek reimbursement using the correspondence allotment.

107. Some private schools that are Denali PEAK Partners further advertise this partnership on their websites, and advertise eligibility for reimbursement via the correspondence program allotment in discussing their tuition and fees.

108. For example, Mountain City Christian Academy (“MCCA”) in Anchorage is a PEAK Partner. MCCA describes itself as the largest K-12 private school in Anchorage on its website. On the tuition page of its website, it explains “MCCA partners with Denali Peak Correspondence School.” This means that as a PEAK Partner, students “may concurrently enroll at Denali PEAK, simplifying the enrollment, grade, and receipt submission process. This collaboration provides families with a reimbursement check of up to \$3,200 per student to help cover their child’s academic expenses.” If a family does not wish to concurrently enroll their student in Denali PEAK, families “may opt out of this partnership.” By having concurrent enrollment as the default option, this PEAK Partnership encourages the use of what are supposed to be public education funds to subsidize private school tuition.

109. Denali PEAK Business Office maintains a record of all financial transactions pertaining to the allotment of each student enrolled in the Denali PEAK correspondence program. Parents must submit receipts or invoices, including a description of the material or services, to receive reimbursement.

110. Denali PEAK has reimbursed private school tuition using the publicly funded allotment, and will continue to do so this school year.

Galena City School District

111. Defendant Galena operates Interior Distance Education of Alaska (“IDEA”) which is a statewide correspondence program. IDEA openly advertises the fact that students enrolled in their program “may take classes at a private school” and receive a use their partial or full allotment of public funds to pay tuition at such a private educational institution. IDEA advertises the full-time allotment amount they will pass through to families as \$2,700 per year, per K-12 student.

112. IDEA allows unused allotment funds to be carried over from year-to-year in a Allotment Carryover Account (“ACA”).

113. IDEA discourages its enrolled students from public school participation by advertising the fact that if a student takes any classes from a local public school, their funding and allotment is reduced by 25% for each class they take from a public, not private, educational institution.

114. IDEA’s 2023-24 Student Handbook specifically discusses students enrolled in IDEA who are also “Full-time Private School Students” using their publicly funded allotment to pay all or a portion of their private school tuition.

115. IDEA staff provide little to no interaction or oversight for many of its students that are co-enrolled in private schools.

116. IDEA’s 2023-24 Parent Handbook states a requirement that all curriculum and courses purchased with allotment funds must be secular (not religious) in nature but

also acknowledges that IDEA allows allotment funds to be used to reimburse payment of tuition at private schools, including tuition for full time enrollment in private schools.

117. IDEA enrollment has continued to rise and is currently believed to have nearly 7,500 students, making it the largest school in Alaska by enrollment.

118. IDEA has in the past reimbursed enrolled students' private school tuition via publicly funded allotments and continues to do so this school year.

119. Without declaratory and injunctive relief, DEED and school districts via the public correspondence programs will continue to provide public funds in the form of allotments to reimburse parents or guardians for tuition, courses, curriculum, and other materials purchased at private educational institutions.

120. The correspondence study program allotments are public funds that come from the BSA and are distributed to school districts consistent with formulas applied by DEED. DEED is obligated to provide oversight to primary and secondary correspondence programs run by school districts, and even if it may not impose additional requirements under AS 14.03.300(b), it has the authority to withdraw approval for public correspondence programs that are violating Alaska law, including the Alaska Constitution.

121. Some correspondence programs have already distributed public funds, totaling thousands of dollars per student per year, which paid for tuition, courses, and educational services and materials at private schools and colleges. This is exactly the

type of direct benefit for private educational institutions prohibited by Article VII, Section 1 of the Alaska Constitution.

V. CLAIMS FOR RELIEF

COUNT I

(Violation of Article VII, Section 1 of the Alaska Constitution)

122. Plaintiffs reallege and incorporate by reference all previous and subsequent paragraphs as set forth herein.

123. Alaska Statute 14.03.300-.310, which allows for the payment of educational materials and services provided by private educational institutions using public funds, is unconstitutional as it is being interpreted and applied by the State via the Department of Law and DEED, as well as some school districts.

124. Reimbursing private school tuition with public funds violates the Alaska Constitution. Reimbursing some number of classes at private schools with public funds also violates the Alaska Constitution. Finally, purchasing educational materials and curriculum from private schools with public funds violates the Alaska Constitution.

125. To access the correspondence program allotment, a parent or guardian must enroll their student in a public correspondence program. The correspondence programs receive public funding from DEED, and all school districts operating correspondence programs applied and received approval from DEED to operate those programs.

126. Although DEED circulated the Department of Law's 2022 opinion to school districts—which interpreted AS 14.03.300-.310 to authorize expenditures at

private schools and concluded that a range of expenditures at private educational institutions under AS 14.03.300-.310 would almost certainly be unconstitutional or potentially be unconstitutional—DEED did not verify whether public funds were continuing to be spent at private educational institutions at that time. DEED instead left it to individual school districts to consult with legal counsel.

127. In full, Article VII, Section 1 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, 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.”

128. In *Sheldon Jackson College v. State*, 599 P.2d 127 (Alaska 1979), the Alaska Supreme Court held that a tuition grant program for resident students attending private colleges in Alaska, which were distributed to students to apply towards their private college tuition, violated Article VII, Section 1 of the Alaska Constitution.

129. In reaching this conclusion, the Court considered four factors “in determining generally the type of government action intended to be prohibited by article VII’s direct benefit clause.” *Id.* at 130.

130. First, the Alaska Supreme Court reasoned that “the breadth of the class to which statutory benefits are directed is a critical area of judicial scrutiny.” *Id.* Although “police and fire protection afforded a private school may provide the school with quite

direct benefits . . . such benefits are provided without regard to status or affiliation.” *Id.*
“Conversely, a benefit flowing only to private institutions, or to those served by them,
does not reflect the same neutrality and non-selectivity.” *Id.*

131. The second criterion, “is the nature of the use to which the public funds are
to be put. As is apparent from the convention debate, the core of the concern expressed
in the direct benefit prohibition involves government aid to Education conducted outside
the public schools.” *Id.*

132. Third, the Court explained that “[a] trivial, though direct, benefit may not
rise to the level of a constitutional violation, whereas a substantial, though arguably
indirect, benefit may.” *Id.* The Court concluded that “the magnitude of benefits bestowed
under the tuition grant program [were] quite substantial,” with grants of “\$1,850 for each
eligible student,” and plans to increase the grants to be \$2,500. *Id.* at 131. This resulted
in private colleges receiving hundreds of thousands of dollars. *Id.*

133. Finally, the Court reasoned that “while a direct transfer of funds from the
state to a private school will of course render a program constitutionally suspect, merely
channeling the funds through an intermediary will not save an otherwise improper
expenditure of public monies.” *Id.* at 130 (internal citations omitted). The Court was
clear “that the superficial form of a benefit will not suffice to define its substantive
character.” *Id.* at 131.

134. In *Sheldon Jackson College*, the Alaska Supreme Court further noted that “a laudable purpose cannot escape article VII’s mandate that Alaska pursue its educational objectives through public educational institutions.” *Id.*

135. The Alaska Supreme Court was clear that although under the tuition grant program, public funds were “nominally paid from the public treasury directly to the student, the student [was] merely a conduit for the transmission of state funds to private colleges.” *Id.* at 132.

136. Similarly, pursuant to AS 14.03.300-.310, a parent or guardian being reimbursed for payments made to private educational institutions makes them a “conduit for the transmission” of public correspondence program funds to private schools.

137. “Simply interposing an intermediary ‘does not have a cleansing effect and somehow cause the funds to lose their identity as public funds. While the ingenuity of man is apparently limitless, the court has held with unvarying regularity that one may not do by indirection what is forbidden directly.’” *Id.* (quoting *Wolman v. Essex*, 342 F. Supp. 399, 415 (S.D. Ohio), *aff’d mem.*, 409 U.S. 808 (1972)).

138. In reaching its decision in *Sheldon Jackson College*, the Alaska Supreme Court carefully examined the minutes of the Alaska Constitutional Convention. These minutes “show that an unsuccessful motion was made to delete entirely the direct benefit prohibition of article VII, section 1.” 599 P.2d at 129 (citing 2 Proceedings of the Alaska Constitutional Convention 1526-28). Delegate Armstrong stated that the drafting committee sought to “provide and protect for the future of public schools. *Id.* n.6 (quoting

2 Proceedings of the Alaska Constitutional Convention 1514). Delegates also expressed concerns that “the amount of tax dollars available for the support of public schools might be lessened if public funds were used to support a great many private schools.” *Id.* (citing delegate Coghill in 2 Proceedings of the Alaska Constitutional Convention 1520).

139. Plaintiffs are entitled to a declaration that AS 14.03.300-.310, which allows for the reimbursement of payments to private educational institutions using public funds, violates Article VII, Section 1 of the Alaska Constitution as it is being interpreted and applied.

140. Using public education funds provided under the BSA to pay for educational services and materials at private schools violates the core constitutional concern that public funds be spent only for public education. This takes away from the limited public funds available for public education, and instead subsidizes private education.

141. Plaintiffs are further entitled to injunctive relief preventing any transfer of funds from the public correspondence study program to reimburse payments made to private educational institutions.

COUNT II

(Interpreting and Applying AS 14.03.300-.310 to Allow for Enrollment in a Private School is Fundamentally Inconsistent with the Definition of Correspondence Study Program.)

142. During Alaska’s territorial days, the correspondence program was originally established for families to educate their children at home when they did not

otherwise have access to a public school (the terms correspondence school and homeschool are used interchangeably). Under this traditional program, students completed schoolwork at home and then mailed it to a teacher for grading.

143. During the 1990s, school districts began implementing public correspondence schools with DEED supervising these programs. Some correspondence programs further provided student allotments to support a homeschooling education, and such allotment spending was limited by regulation.

144. Alaska Statutes 14.03.300-.310 then expanded the correspondence allotment program to expressly allow for the purchase of services and materials from private institutions.

145. A number of school districts, including those named as defendants here, allow allotments to be used to reimburse full-time private school tuition and to reimburse some number of private school courses.

146. However, in the Alaska Administrative Code, the State has adopted a regulatory definition of “correspondence study program” that limits the hours of “scheduled face-to-face interaction” for secondary courses and elementary students. 4 AAC 09.990(a)(3); *see also* 4 AAC 33.490(17).

147. In practice, many correspondence programs offered by the defendant school districts currently offer face-to-face interaction as part of the program.

148. Notwithstanding the constitutionality of AS 14.03.300(b), the definition of “correspondence study program” imposes limits on allotment expenditures under AS

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14.03.310, and any interpretation and application of AS 14.03.300-.310 that reimbursed attendance at private school courses beyond the limits in 4 AAC 09.990(a)(3) would be inconsistent with the definition of “correspondence study program.”

149. Because the correspondence study program is limited to homeschooling, spending allotments on private school courses and tuition violates Alaska law.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, pray for relief against Defendants as follows:

1. An order declaring AS 14.03.300-.310 is unconstitutional as applied to:
 - a) the payment of public funds towards full-time tuition at a private educational institution;
 - b) the payment of public funds for classes and/or part-time enrollment at a private educational institution; and
 - c) the payment of public funds for educational materials purchased at a private educational institution, including textbooks, curriculum, lesson plans, and other instructional materials, using a correspondence program allotment;

2. An order declaring that the direct benefit prohibition in Article VII, Section 1 of the Alaska Constitution does not conflict with a parent’s fundamental federal right to direct the education of their child because the United States Supreme Court has repeatedly recognized that states do not have to subsidize private education;

3. An order declaring that paying for private school tuition is fundamentally inconsistent with the definition of a correspondence study program, and therefore correspondence program allotments provided under AS 14.03.300-.310 cannot be used to pay for private school tuition.

4. An order enjoining any current or future use of public allotment funds to reimburse payments to private educational institutions for educational services and materials including full or part-time tuition, classes, textbooks, curriculum and other instructional materials pursuant to AS 14.03.300-.310;

5. An order awarding Plaintiffs' full reasonable attorneys' fees and costs as required by AS 09.60.010(c); and

6. An order granting any and all additional relief to which Plaintiffs are entitled that the Court deems equitable and appropriate.

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