



Board of Education
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July 28, 2023

Lori Weed, School Finance Manager
Department of Education & Early Development
333 Willoughby Avenue, 9th Floor SOB
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Dear Ms. Weed:

The Juneau School District, like school districts across the State of Alaska, works extremely hard to provide the best education for students. However, inadequate funding from the State of Alaska¹ has harmed students—notably historically inadequate appropriations by the Legislature and vetoes by Governor Dunleavy. While the Legislature recognized the fiscal harm currently faced by school districts in §61(e) of HB39 (2023) by providing a one-time increase according to A.S. 14.17.410(b)(1), the Governor’s veto of 50% is another example of the State

¹ Article VII, § 1, Alaska Constitution; *Macauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971) (stating the Legislature, and only the Legislature, has a duty to establish and maintain a public school system because “no other unit of government shares responsibility or authority”); *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 102 (Alaska 2016) (C.J. Stowers and J. Winfree concurring and inviting litigation related to Article VII, § 1 related to A.S. 14.17.410(b)(2) and A.S. 14.12.020(c)); *Moore, et al. v. State of Alaska*, Decision and Order at 174, 3AN-04-9756CI, (Third Judicial District, June 21, 2007) (concluding the State’s constitutional obligation to maintain schools has four components, including a requirement to adequately fund schools: “Third, there must be adequate funding so as to accord to schools the ability to provide instruction in the standards.”) *E.g.*,

Washington: *McCleary v. State*, 173 Wash. 2d 477, 269 P.3d 227 (Wash. 2012) (concluding the State of Washington failed to adequately fund basic education); *McCleary v. State*, No. 84362-7, 2015 WL 13935265 (Wash. Aug. 13, 2015) (imposing monetary sanctions of \$100,000 per day for the state being in contempt of the 2012 *McCleary* decision);

Wyoming: *Campbell Cnty. Sch. Dist. v. State*, 907 P.2d 1238, 1279 (Wyo. 1995) (“Because education is one of the state's most important functions, lack of financial resources will not be an acceptable reason for failure to provide the best educational system. All other financial considerations must yield until education is funded.”); *State v. Campbell Cnty. Sch. Dist.*, 2001 WY 90, 32 P.3d 325 (Wyo. 2001) (describing the constitutionality of educational funding operations and capital costs in Wyoming); *Wyoming Education Association v. Wyoming*, 2022-CV-200-788 (Dist. Ct. Wyo., Dec. 6, 2022) (denying state’s motion to dismiss for failure of WEA to state a claim);

New York: *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 801 N.E.2d 326 (2003) (CFE II) (concluding that New York State failed to provide adequate funding for New York City schools to provide a sound basic education); *Maisto v. State*, 196 A.D.3d 104, 149 N.Y.S.3d 599 (2021) (discussing CFE I & CFE II).

violating its constitutional duty to adequately fund education.² To compensate for the harms caused by inadequate State education funding, local municipalities have stepped up to fill the fiscal gaps that the municipalities are legally allowed to fill pursuant to state statute. However, after crippling educational funding in HB39 10 days earlier with his veto pen, Governor Dunleavy's administration shifted its educational funding vengeance towards municipalities.

On June 29, 2023, the Juneau School District received a letter ("June 2023 DEED letter") from State of Alaska School Finance Manager, Lori Weed, asserting that the City & Borough of Juneau's supplemental appropriation Ordinance 2022-06(b)(AR) may violate A.S. 14.17.410.³ The June 2023 DEED letter references that the State recently satisfied the federal disparity test⁴ and somehow that federal disparity test might govern A.S. 14.17.410 or have consequences for the State. The June 2023 DEED letter was silent as to what corrective action would be necessary and exactly what the Juneau School District should or could do from DEED's perspective. There was also nothing to indicate the June 2023 DEED letter was a final decision from DEED or appealable. In short, the June 2023 DEED letter was vague, but the Juneau School District analyzed Ordinance 2022-06(b)(AR) in light of the letter and state law.

As described in the City and Borough of Juneau Assembly's legislative packet,⁵ the \$2.3M appropriated in Ordinance 2022-06(b)(AR) was for the following: non-instructional deficits of (1) \$0.75M for after school childcare, (2) \$0.23M for community school programs, (3) \$1.28M for pupil transportation and (4) a \$60k purchase for wrestling mats.⁶

While distinguishing essential instructional expenditures from non-instructional expenditures may be ambiguous in some circumstances for the purposes of A.S. 14.17.410,

² 2023 Governor Dunleavy's line-item vetoes of HB39 (2023), DEED §61(e) regarding A.S. 14.17.410(b)(1) at page 148 (PDF page 29) <https://www.akleg.gov/PDF/33/Vetoes/HB39.pdf> (last visited July 18, 2023).

³ On July 15, 2023, DEED Acting Commissioner Teshner informed school districts that a similar letter to what the Juneau School District received would be sent to all municipal school districts, which could trigger an educational funding crisis for future years. Governor Dunleavy's administration may have manufactured this educational fiscal crisis because had he not vetoed the \$85M of A.S. 14.17.410(b)(1) funding in HB39, the State would not be close to breaching the 25% federal disparity test because every school district's fiscal floor would have been raised.

⁴ Section 7009(b) of Elementary and Secondary Education Act, codified at 20 U.S.C. 7709(b) (imposing a disparity cap of 25%); see A.S.14.17.410(c)(2) (imposing a 23% cap)

⁵ <https://juneau-ak.municodemeetings.com/> (Navigate to the Regular Assembly Meeting 2023-09 on April 17, 2023, and locate item #15) (last visited July 22, 2023).

⁶ Wrestling mats are used for activities for JSD and non-JSD youth and for non-instructional community programs.

other circumstances are clear. For example, when a school district offers after school childcare⁷ as a community service—licensed and regulated by the Department of Health—such a program is not instructional.⁸ In other words, the provision of fee-based childcare is not part of a free public education but a community service of the Juneau School District. Similarly, when a school district offers community schools programs for the entire community—adults and children—such as “Survival Spanish”, “CPR, First Aid & AED Course & Certification”, or “Canning Berries and Fruit”⁹ those community services are not targeted towards “school aged” children,¹⁰ occur outside of the daily school schedule, and are outside of DEED’s educational authority because they are not part of a free public education.¹¹ Had the Juneau School District not provided these services, the City and Borough of Juneau could have provided those exact community services without any oversight from DEED. In that vein, the special revenue fund designation helps prevent the Juneau School District from commingling instructional and non-instructional funds to ensure compliance with A.S. 14.17.410. Thus, the community services offered by a school district—even if paid for in part by the local municipality—are not subject to the federal disparity test and not subject to A.S. 14.17.410.

⁷ Juneau School District, RALLY, <https://www.juneauschools.org/en-US/rally-248c4304> (last visited July 17, 2023) (“In partnership with the Juneau School District, RALLY provides state licensed child care for elementary students ages five through twelve.”); State of Alaska Department of Health, *Find a Child Care Provider*, <https://findccprovider.health.alaska.gov/> (last visited July 17, 2023) (Search for “RALLY”).

⁸ 4 AAC 05.080 (describing how instructional curriculum is provided); 20 U.S.C. 7713 (exempting community services from the definition of “current expenditures” because those are not for “free public education” for the purpose of the federal disparity test); Jill Martin, Department of Education Office of General Counsel, transcript of June 21, 2021 hearing at 20, *In the matter of Alaska Department of Education and Early Development Predetermination Proceeding* (“the spirit of the [disparity] test under the regulations is trying to get at is all of the revenues for incurred expenditures that a school district receives and then can use for general operating expenses.”) available at <https://impactaid.ed.gov/wp-content/uploads/2021/06/AK-FY-2022-Predetermination-Hearing-Transcript.docx> (last visited July 21, 2023); *Moore, et al. v. State of Alaska*, Decision and Order at 9-10, 3AN-04-9756CI, (Third Judicial District, June 21, 2007) (making a factual finding that revenues per student varied widely, e.g. \$8,708 for Anchorage and \$22,578 for Yupiit, and “None of these amounts includes capital expenditures, pupil transportation, food service, community schools or certain grants.”).

⁹ Juneau School District, *Juneau Community Schools*, <https://www.juneauschools.org/en-US/community-schools-95f9a1c4> (last visited July 17, 2023); E.g., KTOO, *Community Schools Winter/Spring 2022 Classes*, <https://www.ktoo.org/2022/02/24/used-gondola-on-eaglecrests-wishlist-marie-drake-planetarium-spotlights-the-gas-giants-juneau-community-schools-winter-and-spring-courses-2022-02-23-new-courses-from-juneau-community-schools/> (last visited July 17, 2023).

¹⁰ A.S. 14.03.070 (Defining school age as 6–20-year-old children); 4 AAC 05.010.

¹¹ *Infra* footnote 8; See A.S. 14.03.060 (defining elementary and secondary schools); A.S. 14.07.020 (describing the duties of the Department of Education and Early Development).

The provision of pupil transportation has been challenging for school districts in Alaska. The Legislature has flat funded pupil transportation since SB182 in 2012.¹² Transportation represents one of the fastest-rising categories of inflation, running over 20% higher in April 2022 than the prior year, and the State would need to provide 31% more transportation funding in FY24 just to cover the basic pupil transportation costs. As a consequence, school districts are forced to find lawful alternative funds to provide adequate transportation of students because of changes in student populations, inflation, the pandemic, and the transportation market since 2013.¹³ For the purposes of state law, pupil transportation is clearly not an essential instructional program because it is governed separately by A.S. 14.09.010 instead of within the scope of A.S. 14.17.410, and even the Legislature believes it is discretionary because of the “subject to appropriation” clause in A.S. 14.17.410(a). Additionally, school districts are required—by regulation—to have efficient pupil transportation systems.¹⁴ While pupil transportation is clearly not an instructional expense for the purpose of current Alaska law, pupil transportation has also been deemed exempt from the federal disparity test because of geographical isolation, which has not changed in the last few years.

The Juneau School District is aware that DEED, and other school districts and related entities, argued extensively with the federal Department of Education (US-Ed) that transportation should be excluded from the (FY22) disparity test.¹⁵ Despite US-Ed’s June 30, 2021, decision to the contrary, the recent US-Ed FY23 and FY24 disparity test certifications clearly provide Alaska with a special cost differential regarding pupil transportation: “Transportation revenue is also excluded as it reflects the additional cost of providing free public education in ‘particular types of LEAs such as those affected by geographical isolation’ per 34

¹² A.S. 14.09.010(a)(2).

¹³ Elwin Blackwell, DEED School Finance Manager, transcript of June 21, 2021 hearing at 33, *In the matter of Alaska Department of Education and Early Development Predetermination Proceeding re FY22* (“what we have been seeing since we haven't adjusted those [statutory pupil transportation] rates, the per pupil costs for several years, a lot of districts now are starting to transfer funding out of their operating fund into the pupil transportation fund to cover shortfalls in their funding. So to answer the question, if they can use it for something else, typically the funding is such that they don't have any excess funding.”) available at <https://impactaid.ed.gov/wp-content/uploads/2021/06/AK-FY-2022-Predetermination-Hearing-Transcript.docx> (last visited July 21, 2023).

¹⁴ 4 AAC 27.006 (requiring districts to use the most cost-efficient pupil transportation methods); 4 AAC 27.011(b) (prohibiting duplicate mileage).

¹⁵ State of Alaska Department of Law Memorandum to State Board of Education and Early Development, Litigation summary re *In the matter of Alaska Department of Education and Early Development Predetermination Proceeding re FY22 (School Year 21-22)* (May 6, 2022) available at https://education.alaska.gov/State_Board/june-2022/17E%20Complete%20AG%20report%20for%20June%20mtg.pdf (last visited July 21, 2023).

C.F.R. § 222.162(c)(2)(ii).”¹⁶ Clearly, pupil transportation is now exempt from the disparity test, and there is no reason for disparate treatment of locally funded pupil transportation versus state funded transportation in federal law because the source of funding does not change the geographical isolation basis for the exemption. Thus, while pupil transportation is currently excluded from the disparity test, the State has remedies if US-Ed demands it be considered a disparity test factor again: (1) the State can appeal the US-Ed decision like it did for FY22 and demonstrate that geographical isolation has not changed since FY22, and (2) the Legislature (and Governor) can always follow the Alaska Constitution’s mandate to appropriate adequate education and pupil transportation funding, so municipalities no longer have to discharge the Legislature’s duty of adequately funding “a system of public schools open to all children of the State.”¹⁷

In conclusion, as described above, the \$2.3M appropriation in Ordinance 2022-06(b)(AR) is not subject to A.S. 14.17.410. The provision of community services like childcare (RALLY) and Juneau Community Schools is completely outside the scope of A.S. 14.17.410 and the federal disparity test in §7009 of the Elementary and Secondary Education Act. Similarly, the recent federal determination that pupil transportation in Alaska is exempt from the federal disparity test is consistent with A.S. 14.09.010, which excludes pupil transportation from the scope of A.S. 14.17.410. Thus, the inferences in the June 2023 DEED letter are erroneous.

Consistent with Juneau School District policy, BP 3100 Budget¹⁸, the district is beginning the budgeting process for FY25. If DEED disagrees with the Juneau School District’s position, the district requests a timely response in which DEED clarifies its June 2023 letter by explicitly articulating its rationale, including legal citations, within 14 days.


Deedie Sorensen, Board of Education President


Will Muldoon, Board of Education Clerk

¹⁶ FY23 Disparity Certification from Director Faatimah Muhammad, Impact Aid Program, U.S. Dept. of Education, to Acting Commissioner Heidi Teshner, Alaska Department of Education and Early Development (March 17, 2023).

FY24 Disparity Certification from Director Faatimah Muhammad, Impact Aid Program, U.S. Dept. of Education, to Acting Commissioner Heidi Teshner, Alaska Department of Education and Early Development (June 23, 2023).

¹⁷ Article VII, § 1, Alaska Constitution.

¹⁸ Juneau School District, Business & Non-Instructional Operations, BP 3100 Budget (“The Superintendent or designee shall recommend a budget development process to the Board by October 1.”), available at <https://www.boardpolicyonline.com/?b=juneau> (last visited July 22, 2023).