

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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

Plaintiffs,

vs.

ACTING COMMISSIONER HEIDI
TESHNER, in her official capacity,
STATE OF ALASKA, DEPARTMENT
OF EDUCATION & EARLY
DEVELOPMENT,

Defendant.

FILED in the TRIAL COURTS
State of Alaska Third District

JAN 24 2023

Clerk of the Trial Courts
By _____ Deputy

Case No. 3AN-23- 04309 CI

COMPLAINT

Plaintiffs Edward Alexander, Josh Andrews, Shelby Beck Andrews, and Carey Carpenter, hereby file this Complaint against Defendant Acting Commissioner Heidi Teshner, State of Alaska, Department of Education & Early Development, by stating and alleging the following:

I. INTRODUCTION

1. This suit challenges AS 14.03.300-.310, which is being used to reimburse parents for thousands of dollars in private educational institution services using public funds thereby indirectly funding private education in violation of Article VII, Section 1 of the Alaska Constitution.

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Anchorage, Alaska 99501
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1 2. Alaska Statute 14.03.300(a) provides that under a “correspondence study
2 program” an “individual learning plan” is “developed in collaboration with the student,
3 the parent or guardian of the student, a certified teacher assigned to the student, and other
4 individuals involved in the student’s learning plan.” To meet “instructional expenses,”
5 AS 14.03.310(a) allows a district to “provide an annual student allotment to a parent or
6 guardian of a student enrolled in the correspondence study program.” “A parent or
7 guardian may purchase nonsectarian services and materials from a public, private, or
8 religious organization with a student allotment” if they are consistent with the “individual
9 learning plan.” AS 14.03.310(b).

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

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

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

6 6. Article VII, Section 1 of the Alaska Constitution was never amended,
7 however the language allowing for a parent or guardian to receive an allotment, including
8 for the purchase of services from private educational institutions, was nonetheless enacted
9 in AS 14.03.300-.310 as part of larger legislation.

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

15 8. If the parents of just 10% of Alaska’s students followed Ms. Taylor’s
16 approach of enrolling in the correspondence school program and then requesting
17 reimbursements for private school courses, it would remove about 13,000 students from
18 traditional public schools. Under the Base Student Allotment (“BSA”) of \$5,930, this
19 could result in tens of millions of dollars in public funds being diverted from public
20 schools for the direct benefit of private educational institutions.

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9. 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 and tuition with public funds is exactly the channeling of funds the Alaska Supreme Court has held is prohibited.

10. Because AS 14.03.300-.310 allows the public correspondence program to reimburse parents thousands of dollars for private educational institution services 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

11. 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

1 public educational opportunities including in language and the arts. Edward has worked
2 to advance this goal over the course of his career in his capacity as a teacher, principal,
3 and language coordinator for Fort Yukon. From 2016 to 2020, Edward was the Education
4 Manager for the Tanana Chiefs Conference, overseeing education programs for 42 Tribes
5 of the Interior. He is currently co-chair of Gwich'in Council International, and a
6 homemaker. Mr. Alexander's wife is a physician and Medical Director of the Tanana
7 Chiefs Conference.
8

9 12. Plaintiff Josh Andrews is a teacher who was born and raised in Southeast
10 Alaska, and he is proud to call Craig, Alaska home. Josh comes from a long line of
11 teachers including his parents, grandparents, and even one of his great grandparents. Josh
12 attended elementary school in a Regional Educational Attendance Area in a one-room
13 schoolhouse at a logging camp, and subsequently attended Haines Middle and High
14 Schools. Josh has more than 25-years of teaching experience, and has taught subjects
15 from music to technology to math at the middle and high school levels. Josh also has 5
16 years of experience as a high school principal. Public education has always been a
17 cornerstone of Josh's life, and he is honored to be a public school teacher in Craig. Josh
18 Andrews is married to plaintiff Shelby Beck Andrews, and they are parents of two
19 children who attend Craig public schools.
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22 13. Plaintiff Shelby Beck Andrews moved to Alaska with her parents when she
23 was just two-weeks old, and is a graduate of Haines High School. From 2003-2009,
24 Shelby taught at Craig Middle School. In 2009, Shelby began teaching at Craig High
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1 School. She has taught a variety of subjects to meet the needs of the school and her
2 students, including social studies, history, economics, language arts, and Spanish. Shelby
3 believes it is imperative that there is adequate funding for public schools to provide the
4 best public education for all students throughout Alaska. Shelby reads the plain text of
5 the Alaska Constitution as prohibiting public funds from being diverted from public
6 schools, where they are needed to provide teachers and quality educational programs. Due
7 to budgetary restrictions, Shelby has witnessed public schools in her district struggle to
8 attract and retain a physical education teacher. For high school students, there are limited
9 scheduling options such that students, like her daughter, may have to choose between
10 registering for academic courses or music. As both a teacher and a parent, Shelby wants
11 to see public schools fully funded for the benefit of all Alaskans.
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14 14. Plaintiff Carey Carpenter is a married mother-of-two who has called Alaska
15 home for 23 years. Her children are currently in 7th and 9th grade in the Anchorage
16 School District Japanese Immersion Program. Carey is a registered Civil Engineer, and
17 previously worked for the Alaska Native Tribal Health Consortium as a project manager
18 and design engineer for Alaska Native communities in rural Alaska, primarily working
19 on water and sewage systems. After undergoing treatment and surviving an aggressive
20 form of breast cancer, Carey quit her civil engineering job to start a local nonprofit to
21 support other young adults who are diagnosed with cancer. In her current volunteer role,
22 she serves as the Director of this nonprofit: Anchorage Young Cancer Coalition. Carey
23 began taking an active role in advocating on behalf of Anchorage students in 2016 after
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1 the principal of her children's school unilaterally decided to cut the lunch and recess time
2 for all students without discussing this change with students or their parents. As part of
3 her advocacy for students, she worked with another Anchorage parent to start a grassroots
4 parent group called ASD60. ASD60 fought for evidence-based and CDC-backed
5 guidelines for adequate lunch and recess time for children across the Anchorage School
6 District. This year, Carey has been involved in advocating for the State Legislature to
7 increase school funding to avoid further cuts to public education programs. Anchorage
8 public education programs including IGNITE, sports, and language immersion, that her
9 children participate in, have faced the prospect of dramatic changes and cuts based on
10 budgetary issues. Carey strongly believes that funneling public funds away from public
11 schools to subsidize private education diminishes her children's educational opportunities
12 and is illegal under the Alaska Constitution.
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15 15. Defendant Acting Commissioner Heidi Teshner of the Office of the
16 Commissioner, State of Alaska, Department of Education & Early Development
17 ("DEED") is being sued in her official capacity. DEED provides and oversees core public
18 education services, including public school funding; fiscal accountability, compliance,
19 and oversight; school effectiveness programs; and active partnerships. Specifically,
20 DEED is responsible for ensuring that education funding is appropriately distributed to
21 recipients based on legislative appropriation and by statute and in accordance with the
22 foundation formula, other formula programs, or legislative intent for funding outside the
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1 primary formulas. DEED is obligated to follow the Alaska Constitution, including Article
2 VII, Section 1, in performance of these duties.

3 **III. JURISDICTION AND VENUE**

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

6 17. Venue is proper in the Third Judicial District as Defendant maintains offices
7 and may be served within Anchorage, Alaska, and the claims arise from actions that have
8 and will take place, in part, within the Third Judicial District.

9 **IV. FACTUAL ALLEGATIONS**

10 18. School districts in Alaska can establish state-funded public correspondence
11 schools for families who choose to homeschool their children (the terms correspondence
12 school and homeschool are used interchangeably). Although there used to be a statewide
13 correspondence program, all current correspondence programs are district-provided.
14 AGO No. 2021200228 at 4 n.13 (July 25, 2022); *see also* AS 14.03.300(a) (providing
15 either a “district or the department that provides a correspondence study program” shall
16 provide an individual learning plan).

17 19. As of 2022, correspondence program students were funded at 90% of
18 \$5,930 (which totals \$4,851), or 90% of the base amount the state pays per student.
19 Alaska currently has approximately 34 correspondence school programs in the state. *See*
20 Lisa Phu, *Can Public Funds be Used for Private School Classes? Education Department*
21 *Isn't Sure*, ALASKA BEACON, June 3, 2022.

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

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

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

15 23. Ms. Taylor’s opinion piece outlined the steps parents can use to enroll their
16 children in the public correspondence (homeschooling) program, select the private school
17 of their choice, and then receive reimbursements for that private school tuition from the
18 annual correspondence student allotment. This approach is only possible because, under
19 AS 14.03.310, correspondence study program funds may be used to purchase services
20 from approved vendors, including private schools.
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1 24. Ms. Taylor and her husband Attorney General Treg Taylor's two youngest
2 school-age children attend a private school, while they are enrolled in the Anchorage
3 School District's Family Partnership Charter School. Ms. Taylor explained that although
4 annual tuition at the private school is \$6,000, she will be reimbursed for up to \$4,000 per
5 child, meaning she will "only personally have to pay the remaining balance of \$2,000 per
6 child."
7

8 25. Other homeschooling programs in Alaska have been reimbursing parents
9 for enrolling their children in private school classes for years. For example, Mat-Su
10 Central is a homeschool program within the Matanuska-Susitna Borough School District.
11 The *Alaska Beacon* reported that "Principal Stacey McIntosh said her school currently
12 reimburses families for secular classes at private schools," and "her homeschool program
13 has been reimbursing families for non-religious private school classes for three years,
14 since right before the COVID-19 pandemic hit." Lisa Phu, *Can Public Funds be Used*
15 *for Private School Classes? Education Department Isn't Sure*, ALASKA BEACON, June 3,
16 2022.
17

18 26. Mat-Su Central offers reimbursement for classes at 12 private schools,
19 providing a list of classes at each private school that can be reimbursed. The allotment
20 amount was \$2,200 for grades kindergarten to 12, but Principal McIntosh reported that
21 "next year, we're increasing our allotment to \$3,000 for 9 through 12 and \$2,600 for K
22 through 8." *Id.*
23
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1 27. Matsu-Central has no limits on the amount of the allotment that can be used
2 for private school classes: Principal McIntosh explained that so long as classes have
3 passed the vetting process, a family could use their full allotment for private school
4 classes. Parents simply need to submit receipts from the private school classes, which are
5 then reimbursed. *Id.*

6
7 28. Family Partnership Charter School, of the Anchorage School District, offers
8 an allotment of \$4,000 for elementary school, \$4,250 for middle school and \$4,500 for
9 high school students. The school plans to offer its families the option to use that allotment
10 to reimburse private school classes starting next school year. *Id.*

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

14
15 30. Alaska Statute 14.03.300-.310's relevant statutory language was originally
16 part of SB 100, which then-Senator Dunleavy sponsored. The bill went through several
17 committee hearings, but the language eventually passed as part of House Bill 278.

18
19 31. Senator Dunleavy introduced SB 100 in 2013. In discussing "[p]ublic
20 correspondence/homeschooling study programs" Dunleavy's SB 100 sponsor statement
21 noted, "[m]ost programs provide a student allotment to purchase educational services or
22 materials to meet the student's Individual Learning Plan (ILP). Under SB 100, a parent
23 may purchase services and materials from a private or religious organization with a
24

1 student allotment to meet the student's ILP." Sen. Educ. Comm., 28th Leg., March 3,
2 2014 at 8:01:20 AM, <https://www.akleg.gov/PDF/28/M/SEDC2014-03-030800.PDF>.

3 32. Statutes and regulations addressing the correspondence study program
4 impact thousands of students in Alaska. As Senator Dunleavy also explained in his SB
5 100 sponsor statement: "Public correspondence/homeschool study programs serve almost
6 10 percent of the total Alaska student population. This approach to education is one of
7 the fastest growing options in the state." Sen. Educ. Comm., 28th Leg., March 3, 2014 at
8 8:01:20 AM, <https://www.akleg.gov/PDF/28/M/SEDC2014-03-030800.PDF>.

9 33. Dunleavy described the benefits of SB 100 as allowing "freedom and
10 flexibility," and to "focus on the outcomes, not the inputs." Sen. Educ. Comm., 28th
11 Leg., March 3, 2014 at 8:07:44 AM, [https://www.akleg.gov/PDF/28/M/SEDC2014-03-](https://www.akleg.gov/PDF/28/M/SEDC2014-03-030800.PDF)
12 [030800.PDF](https://www.akleg.gov/PDF/28/M/SEDC2014-03-030800.PDF).

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

19 35. Multiple Senators, including sponsoring Senator Dunleavy, noted that SB
20 100 presented constitutional issues because it allowed for the purchase of educational
21 services from private institutions with public funds. This use of public funds would
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1 violate Article VII, Section 1 of the Alaska Constitution: “No money shall be paid from
2 public funds for the direct benefit of any religious or other private educational institution.”

3 36. For example, Senator Berta Gardner shared that “she has a legal opinion
4 that [SB 100] is not constitutional,” and had requested her staff “transmit that opinion to
5 the members of the committee and their staff.” Educ. Comm., 28th Leg., March 21, 2014
6 at 8:24:31 AM, <https://www.akleg.gov/PDF/28/M/SEDC2014-03-210759.PDF>.
7

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

14 38. SJR 9 proposed to delete the final sentence of Article VII, Section 1 of the
15 Alaska Constitution: “No money shall be paid from public funds for the direct benefit of
16 any religious or other private educational institution.” *Id.* It simultaneously proposed to
17 amend Article IX, Section 6, reading “No tax shall be levied, or appropriation of public
18 money made, or public property transferred, nor shall the public credit be used, except
19 for a public purpose,” to add a clause “; however, nothing in this section shall prevent
20 payment from public funds for the direct educational benefit of students as provided by
21 law.” *Id.*
22

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

6
7 40. Dunleavy presented the benefit of passing both SJR 9’s constitutional
8 amendment and SB 100, as “allow[ing] a parent and a teacher to develop an ILP that
9 includes a public/private partnership concept with a public outcome.” *Id.*

10 41. SJR 9 died in committee, and Article VII, Section 1 was never amended.
11 However, relevant language from SB 100 was added to House Bill 278, which passed in
12 2014. *See* 2014 Alaska Sess. Laws Ch. 15, § 15. These provisions were enacted in AS
13 14.03.300-.310.
14

15 42. Just as SB 100 envisioned, AS 14.03.300-.310 purports to allow a parent or
16 guardian to use their child’s annual public correspondence study program student
17 allotment to purchase materials and services from private educational institution vendors.
18

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

23 44. On June 6, 2022, the Alaska Department of Law issued a press release
24 explaining, “[a]s the Alaska Department of Law considers the legality of using public
25

1 funds for private education costs, Alaska Attorney General Treg Taylor recused himself
2 from all matters involving correspondence school allotments on May 21, 2022.” This
3 press release acknowledged that “Taylor’s wife is an advocate for the idea and has
4 recently written a column on it.” Press Release (June 6, 2022), Attorney General Taylor
5 Recused from Correspondence School Allotment Advice in May,
6 <https://law.alaska.gov/press/releases/2022/060622-Allotment.html>.
7

8 45. There was a delegation of authority from Attorney General Treg Taylor to
9 Deputy Attorney General Cori Mills regarding the matter of correspondence school
10 allotments. State of Alaska, Online Public Notices, Delegation of Authority to Deputy
11 Attorney General Cori Mills, (dated May 21, 2022)
12 <https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=207008>.
13

14 46. On July 25, 2022, Alaska Deputy Attorney General Cori Mills released the
15 Department of Law’s opinion on whether publicly funded correspondence schools can
16 pay for services from private schools. See Press Release, Deputy Attorney General’s
17 Opinion Provides Guidance to School Districts on Public Correspondence School
18 Allotments and Private School Uses, July 25, 2022,
19 <https://law.alaska.gov/press/releases/2022/072522-SchoolsOpinion.html>.
20

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

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

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

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

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

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

9
10 53. However, the opinion left many of what it called “in between” or “gray
11 area” situations to the discretion of school districts, suggesting using public funds for
12 “one or two [private] classes to support a public correspondence school program is likely
13 constitutional, whereas using public school allotment money to pay for most or all of a
14 private school’s tuition would not be.” In this multitude of “gray area” situations that
15 may or may not violate the Alaska Constitution, “DEED and school districts should
16 consult with legal counsel.” *Id.* at 19.

17
18 54. Acting Commissioner of DEED, Heidi Teshner, circulated a “Letter to
19 Superintendents” on July 25, 2022, sharing the Department of Law’s legal opinion. This
20 letter explained, “The Alaska Constitution supports using allotments to pay for
21 educational services and materials provided by private vendors including paying for
22 courses *when the main purpose of purchasing the services and materials is to further the*
23 *student’s public school correspondence education.* What the constitution does not
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1 support is paying for sectarian or religious courses or supplanting the public education
2 with a full private school education by paying the tuition for full-time enrollment in a
3 private school.”

4 55. If AS 14.03.300-.310 remains in effect, public school correspondence
5 programs will continue to use public funds to reimburse parents or guardians for courses
6 their child has taken at private educational institutions. Some correspondence programs
7 have already distributed public funds, totaling thousands of dollars per student, which
8 paid for instruction at private schools. This is exactly the type of direct benefit for private
9 educational institutions prohibited by Article VII, Section 1 of the Alaska Constitution.
10

11 **V. CLAIMS FOR RELIEF**

12 **COUNT I**

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

14 56. Plaintiffs reallege and incorporate by reference all previous and subsequent
15 paragraphs as set forth herein.
16

17 57. Alaska Statute 14.03.300-.310, which allows for the payment of
18 educational materials and services provided by private institutions using public funds, is
19 unconstitutional.
20

21 58. In full, Article VII, Section 1 of the Alaska Constitution provides: “The
22 legislature shall by general law establish and maintain a system of public schools open to
23 all children of the State, and may provide for other public educational institutions. Schools
24 and institutions so established shall be free from sectarian control. No money shall be
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1 paid from public funds for the direct benefit of any religious or other private educational
2 institution.”

3 59. In *Sheldon Jackson College v. State*, 599 P.2d 127 (Alaska 1979), the
4 Alaska Supreme Court held that a tuition grant program for resident students attending
5 private colleges in Alaska, which were distributed to students to apply towards their
6 private college tuition, violated Article VII, Section 1 of the Alaska Constitution.
7

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

11 61. First, the Alaska Supreme Court reasoned that “the breadth of the class to
12 which statutory benefits are directed is a critical area of judicial scrutiny.” *Id.* Although
13 “police and fire protection afforded a private school may provide the school with quite
14 direct benefits . . . such benefits are provided without regard to status or affiliation.” *Id.*
15 “Conversely, a benefit flowing only to private institutions, or to those served by them,
16 does not reflect the same neutrality and non-selectivity.” *Id.*
17

18 62. The second criterion, “is the nature of the use to which the public funds are
19 to be put. As is apparent from the convention debate, the core of the concern expressed
20 in the direct benefit prohibition involves government aid to *Education* conducted outside
21 the public schools.” *Id.*
22

23 63. Third, the Court explained that “[a] trivial, though direct, benefit may not
24 rise to the level of a constitutional violation, whereas a substantial, though arguably
25

Cashion Gilmore & Lindemuth
510 L Street, Suite 601
Anchorage, Alaska 99501
(907) 222-7932 fax (907) 222-7938

1 indirect, benefit may.” *Id.* The Court concluded that “the magnitude of benefits bestowed
2 under the tuition grant program [were] quite substantial,” with grants of “\$1,850 for each
3 eligible student,” and plans to increase the grants to be \$2,500. *Id.* at 131. This resulted
4 in private colleges receiving hundreds of thousands of dollars. *Id.*

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

11 12 65. In *Sheldon Jackson College*, the Alaska Supreme Court further noted that
13 “a laudable purpose cannot escape article VII’s mandate that Alaska pursue its
14 educational objectives through public educational institutions.” *Id.*

15 16 66. The Alaska Supreme Court was clear that although under the tuition grant
17 program, public funds were “nominally paid from the public treasury directly to the
18 student, the student [was] merely a conduit for the transmission of state funds to private
19 colleges.” *Id.* at 132.

20 21 67. Similarly, pursuant to AS 14.03.300-.310, a parent or guardian being
22 reimbursed for payments made to private educational institutions makes them a “conduit
23 for the transmission” of public correspondence program funds to private schools.
24

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1 68. “Simply interposing an intermediary ‘does not have a cleansing effect and
2 somehow cause the funds to lose their identity as public funds. While the ingenuity of
3 man is apparently limitless, the court has held with unvarying regularity that one may not
4 do by indirection what is forbidden directly.’” *Id.* (quoting *Wolman v. Essex*, 342 F. Supp.
5 399, 415 (S.D. Ohio), *aff’d mem.*, 409 U.S. 808 (1972)).

6
7 69. In reaching its decision in *Sheldon Jackson College*, the Alaska Supreme
8 Court carefully examined the minutes of the Alaska Constitutional Convention. These
9 minutes “show that an unsuccessful motion was made to delete entirely the direct benefit
10 prohibition of article VII, section 1.” 599 P.2d at 129 (citing 2 Proceedings of the Alaska
11 Constitutional Convention 1526-28). Delegate Armstrong stated that the drafting
12 committee sought to “provide and protect for the future of public schools. *Id.* n.6 (quoting
13 2 Proceedings of the Alaska Constitutional Convention 1514). Delegates also expressed
14 concerns that “the amount of tax dollars available for the support of public schools might
15 be lessened if public funds were used to support a great many private schools.” *Id.* (citing
16 delegate Coghill in 2 Proceedings of the Alaska Constitutional Convention 1520).

17
18 70. Plaintiffs are entitled to a declaration that AS 14.03.300-.310, which allows
19 for the reimbursement of payments to private educational institutions using public funds,
20 violates Article VII, Section 1 of the Alaska Constitution.

21
22 71. Even if there was some interpretation that would render AS 14.03.300-.310
23 facially constitutional, it is still unconstitutional as it is currently being applied by DEED,
24

1 seriously financially undercutting the core constitutional concern that public funds be
2 available for public education.

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

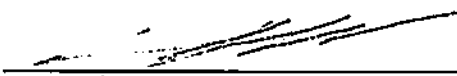
6 **VI. PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs, pray for relief against Defendant as follows:

- 8
- 9 1. An order declaring AS 14.03.300-.310 is unconstitutional;
 - 10 2. An order enjoining any current or future use of public funds to reimburse
11 payments to private educational institutions pursuant to AS 14.03.300-.310;
 - 12 3. An order awarding Plaintiffs full reasonable attorneys' fees and costs as
13 required by AS 09.60.010(c); and
 - 14 4. An order granting any and all additional relief to which Plaintiffs are
15 entitled that the Court deems equitable and appropriate.

16
17
18 CASHION GILMORE & LINDEMUTH
19 Attorneys for Plaintiffs

20
21 DATE: January 24, 2023

22 
23 Scott M. Kendall
24 Alaska Bar No. 0405019
25 Lauren L. Sherman
26 Alaska Bar No. 2009087