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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,

v.

ACTING COMMISSIONER HEIDI TESHNER, in her official capacity, State of Alaska, Department of Education and Early Development,

Defendant,

v.

ANDREA MOCERI, THERESA BROOKS, and BRANDY PENNINGTON.

Intervenors.

Case No. 3AN-23-04309CI

DEFENDANT'S MOTION TO DISMISS

Defendant, Heidi Teshner, Acting Commissioner of the State of Alaska, Department of Education and Early Development (DEED), asks the Court to dismiss the complaint under Civil Rule 12(b)(6) for failure to state a claim and 12(b)(7) for failure to join indispensable parties.

The Court should dismiss the complaint's facial challenge—i.e., the claim that AS 14.03.300-.310 "is unconstitutional"—for failure to state a claim. Complaint ¶ 57, 70 & p. 22. These statutes authorize school districts to provide allotment funds to parents of correspondence school students for use on needed services or materials.

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These statutes are not facially unconstitutional because they are capable of a range of possible applications that do not violate Article VII, Section 1 of the Alaska Constitution. Indeed, student allotment funds can be spent in ways that do not even involve a "religious or other private educational institution," let alone provide a "direct benefit" to one. Although other possible uses of allotment funds would be questionable, and some even clearly unconstitutional, that does not justify striking down the statutes entirely—instead, that is grounds for an as-applied challenge, which must identify specific instances in which allotment funds are being used unconstitutionally.

But the Court should not allow an as-applied challenge to AS 14.03.300-.310 to go forward without the school districts as parties. DEED does not currently administer any correspondence school programs—only the school districts do. It is the school districts that are providing parents with student allotment funds and approving particular uses of those funds. An as-applied challenge claiming that allotment funds are being used in unconstitutional ways thus calls the school districts' actions into question. DEED cannot simply stand in for the school districts, defending their actions and representing their interests. If plaintiffs want to make an as-applied challenge, they need to join the school districts they believe are applying the law in a way that violates the constitution. Otherwise, the case needs to be dismissed.

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BACKGROUND

I. Alaska Statutes 14.03.300-.310 allow school districts to provide student allotments to parents of correspondence school students for use on instructional expenses, subject to various restrictions.

Alaska's public education system includes public correspondence schools as one of the options available to meet the varied needs of Alaskan families. In these programs, students are educated outside of traditional brick-and-mortar schools, generally instructed by their parents.[1] But correspondence schools are publicly funded[2] and subject to DEED's general oversight,[3] and their students are held to state educational standards.[4] All existing public correspondence schools are run by local school districts—although DEED is statutorily authorized to provide a centralized correspondence school,[5] it does not currently do so.

In 2014, the legislature enacted AS 14.03.310, authorizing school districts with correspondence programs to "provide an annual student allotment to a parent or guardian of a student enrolled in the correspondence study program for the purpose of meeting instructional expenses for the student." These student allotments may be used to "purchase nonsectarian services and materials from a public, private, or religious

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[1] *See* 4 AAC 09.990(a)(3) (defining "correspondence study program"); 4 AAC 33.490(17).

[2] AS 14.17.430.

[3] AS 14.07.020(a)(9); 4 AAC 33.420; 4 AAC 33.460.

[4] AS 14.03.300(a) (requiring an individual learning plan and monitoring by a certificated teacher); 4 AAC 33.421(b) (requiring strategies to help students meet statewide standards); 4 AAC 33.426 (requiring enrollment in core courses).

[5] AS 14.07.020(9).

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organization," provided the purchase meets the criteria listed in the statute, including being approved by the district, aligned with state standards, and not partisan or sectarian.[6] When a child leaves the correspondence program, any non-consumable materials or unspent funds must be returned.[7]

II. In 2022, the Department of Law opined that the allotment program is facially constitutional, but that some uses of public funds would be unconstitutional and others must be evaluated based on specific facts.

Article VII, Section 1 of the Alaska Constitution provides:

> The legislature shall be 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.

The Alaska Supreme Court has observed that in drafting this provision, the framers "wished the constitution to support and protect a strong system of public schools."[8] They sought to do so without incidentally preventing the State "from providing for the health and welfare of private school students, or from focusing on the special needs of individual residents."[9] The framers designed the constitution "to commit Alaska to the pursuit of public, not private education, without requiring absolute

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6 AS 14.03.310(b).

7 4 AAC 33.422(b); AS 14.03.310(d)(2).

8 *Sheldon Jackson Coll. v. State*, 599 P.2d 127, 129 (Alaska 1979).

9 *Id.* (Citations omitted).

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governmental indifference to any student choosing to be educated outside the public school system."[10]

In July 2022, the Department of Law issued an attorney general opinion examining uses of correspondence student allotments in light of the last sentence of Article VII, Section 1 prohibiting the payment of public funds for the direct benefit of private educational institutions. The opinion addressed "the ability of public correspondence school students to spend public funds in the form of allotment money on services offered by private vendors including classes presented either online or in-person to fulfill the students' public school education."[11]

The opinion concluded that using correspondence school program student allotments to purchase materials or services from a private vendor "*does not*, on its face, violate the Alaska Constitution's prohibition against spending public funds for the direct benefit of a private educational institution."[12] But the opinion also concluded that "the Alaska Constitution does establish boundaries on how public money can be spent under the program," and would bar some uses of allotment funds like "pay[ing] tuition for full-time enrollment in a private school."[13] The opinion attempted to provide "guidance

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[10] *Id.*

[11] State of Alaska, Dep't of Law, Op. Att'y Gen. No. 2021200228 at 1 (July 25, 2022), *available at* https://law.alaska.gov/pdf/opinions/opinions_2022/22-002_2021200228.pdf.

[12] *Id.* (emphasis in original).

[13] *Id.* at 2.

on the types of spending that are clearly constitutional, clearly unconstitutional, and those that fall into a gray area."[14]

In doing so, the opinion discussed and applied *Sheldon Jackson College v. State*, in which the Alaska Supreme Court held that state tuition grants to students at private colleges violated Article VII, Section 1.[15] The opinion summarized *Sheldon Jackson* as identifying "three criteria to weigh" in determining whether a state program provides an unconstitutional direct benefit to a religious or other private educational institution: (1) "the breadth of the class to which statutory benefits are directed," (2) "the nature of the use to which the public funds are to be put," and (3) "the magnitude of the benefit conferred."[16] The opinion also canvassed prior attorney general opinions, observing that the Department of Law's "conclusion on any particular question is driven by facts related to who would benefit from the payments and by how much."[17]

Applying principles gleaned from these authorities, the opinion ultimately concluded that using student allotments to pay for college classes, tutoring, or extracurriculars would likely be constitutional, but that using them "to pay for the tuition of a student being educated full-time at a private institution would be highly unlikely to survive constitutional scrutiny."[18] As for the "gray area," the opinion

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[14] *Id.*

[15] *Id.* at 7-10 (discussing *Sheldon Jackson Coll. v. State*, 599 P.2d 127 (Alaska 1979).

[16] *Id.*

[17] *Id.* at 10.

[18] *Id.* at 12-13.

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concluded that using the funds for a student "to attend certain classes at a private school" might pass muster depending on the facts, including the "purpose" and "magnitude" of the spending.[19] The opinion advised that "when those situations arise, DEED and school districts should consult with legal counsel."[20]

III. In 2023, Alexander sued DEED, claiming that the allotment program violates Article VII, Section 1 of the Alaska Constitution.

In January 2023, four individual plaintiffs (collectively, "Alexander") filed a complaint against the acting commissioner of DEED.[21] The complaint asserts one count, claiming that "Alaska Statute 14.03.300-.310, which allows for the payment of educational materials and services provided by private institutions using public funds, is unconstitutional" under Article VII, Section 1 of the Alaska Constitution. Complaint ¶ 57. The complaint further asserts that "[e]ven if there was some interpretation that would render AS 14.03.300-.310 facially constitutional, it is still unconstitutional as it is currently being applied by DEED, seriously undercutting the core constitutional concern that public funds be available for education." Complaint ¶ 71. As relief, the complaint seeks "[a]n order declaring AS 14.03.300-.310 is unconstitutional" and "[a]n order enjoining any current or future use of public funds to reimburse payments to private educational institutions pursuant to AS 14.03.300-.310." Complaint p. 22.

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19 *Id.* at 13-14.

20 *Id.* at 19.

21 A new commissioner, Susan McKenzie, has been appointed by the Governor, effective April 1, 2023.

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Soon after the complaint was filed, three parents of correspondence school students filed a motion to intervene, which the Court has granted.

LEGAL STANDARD

Alaska Civil Rule 12(b)(6) authorizes a defendant to seek dismissal of a complaint "for failure to state a claim upon which relief can be granted." A motion filed under this rule tests the legal sufficiency of the claims in the complaint. To survive such a motion, a complaint must "allege a set of facts consistent with and appropriate to some enforceable cause of action."[22] A court liberally construes the complaint and assumes all factual allegations can be proven as true.[23] But legal conclusions and unwarranted factual inferences are not presumed true.[24]

Alaska Civil Rule 12(b)(7) authorizes a defendant to assert a plaintiff's "failure to join a party under Rule 19" by motion at the pleading stage. Alaska Civil Rule 19 requires joinder of parties that are needed for just adjudication.

ARGUMENT

I. Alexander's facial challenge to AS 14.03.300-.310 fails to state a claim because the statutes can be constitutionally applied.

The complaint does not ask the Court to declare that certain uses of state funds under AS 14.03.300-.310 violate Article VII, Section 1 of the Alaska Constitution—

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22 *Larsen v. State*, 284 P.3d 1, 6-7 (Alaska 2012).

23 *Id.*

24 *Dworkin v. First Nat. Bank of Fairbanks*, 444 P.2d 777, 779 (Alaska 1968) ("Well pleaded allegations of the complaint are deemed admitted for purposes of [a 12(b)(6)] motion but unwarranted factual inferences and conclusions of law are not considered admitted in resolving the merits of such motions.").

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instead, the complaint alleges that AS 14.03.300-.310 "is unconstitutional" and asks the Court to declare it such, thereby striking these statutes down entirely. Complaint ¶ 57, 70 & p. 22. The complaint thus asserts a facial constitutional challenge to the statutes. The Court should dismiss this claim because AS 14.03.300-.310 are not facially unconstitutional.

"A statute is facially unconstitutional if 'no set of circumstances exists under which the Act would be valid.'"[25] Even under a more flexible standard,[26] "plaintiffs seeking facial invalidation of a law must establish at least that the law does not have a 'plainly legitimate sweep.'"[27] As long as the law has a plainly legitimate sweep—i.e., a set of valid applications—the Court "will uphold [it] against a charge that it is facially unconstitutional even if it might sometimes create problems as applied."[28] Put differently, if some applications of a statute are constitutional while others are not, the statute is not *facially* unconstitutional—instead, it may be unconstitutional as applied.[29]

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[25] *Javed v. Dep't of Pub. Safety, Div. of Motor Vehicles*, 921 P.2d 620, 625 (Alaska 1996) (quoting *United States v. Salerno*, 481 U.S. 739, 745(1987)).

[26] *See State v. Planned Parenthood of Alaska*, 35 P.3d 30, 35 (Alaska 2001).

[27] *Treacy v. Municipality of Anchorage*, 91 P.3d 252, 268 (Alaska 2004).

[28] *Alaska Fish & Wildlife Conservation Fund v. State*, 347 P.3d 97, 104 (Alaska 2015) (quoting *State v. Planned Parenthood of Alaska*, 171 P.3d 577, 581 (Alaska 2007)).

[29] *Cf. State, Dep't of Revenue, Child Support Enf't Div. v. Beans*, 965 P.2d 725, 728 (Alaska 1998) (rejecting a facial challenge to a statute permitting the State to suspend the driver's licenses of child support obligors who were delinquent—explaining that suspension would be constitutional in cases of parents who could pay child support but unconstitutional as applied to parents who were unable to pay support—and imposing this constitutional limit on the child support enforcement agency's discretion under the statute); *State v. ACLU of Alaska*, 204 P.3d 364, 372 (Alaska 2009) ("A holding of

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In such a situation, a court does not strike the statute down entirely.[30] Indeed, Alaska law requires that any statute that does not contain a severability clause be construed to contain one that states:

> If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be affected thereby.[31]

Pointing out unlawful applications thus does not doom a statute. The Court should also keep in mind that "[a] party raising a constitutional challenge to a statute bears the burden of demonstrating the constitutional violation. A presumption of constitutionality applies, and doubts are resolved in favor of constitutionality."[32]

Examining AS 14.03.300-.310 will reveal that these two statutes both have a "plainly legitimate sweep"—and are thus facially constitutional—because they can be applied in a range of possible ways that do not violate (or in many cases, even implicate) Article VII, Section 1.

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facial unconstitutionality generally means that there is no set of circumstances under which the statute can be applied consistent with the requirements of the constitution. A holding that a statute is unconstitutional as applied simply means that under the facts of the case application of the statute is unconstitutional. Under other facts, however, the same statute may be applied without violating the constitution.").

[30] *See Beans*, 965 P.2d at 728 (concluding that because "the statute need not be applied in [an unconstitutional] manner; it is not unconstitutional on its face"); *see also Treacy*, 91 P.3d at 268 ("[A]lthough the ordinance could be enforced in ways that bear no rational connection to the municipality's goals, or in ways that unduly restrict the underlying substantive rights of movement, privacy, and speech, we need not deal with such possibilities on this facial review.").

[31] AS 01.10.030.

[32] *State, Dep't of Revenue v. Andrade*, 23 P.3d 58, 71 (Alaska 2001) (quoting *Baxley v. State*, 958 P.2d 422, 428 (Alaska 1998)).

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Alaska Statute 14.03.300 requires a school district[33] with a correspondence study program to provide "individual learning plans" for its students that meet a list of criteria, such as being "developed with the assistance and approval of the certificated teacher assigned to the student by the district" and providing "a course of study for the appropriate grade level consistent with state and district standards." This statute is straightforwardly capable of being applied without triggering any Article VII, Section 1 concerns. Nothing in AS 14.03.300 requires that individual learning plans involve religious or private educational institutions, nor requires that any public funds be used to benefit such institutions. A school district could develop individual learning plans for its correspondence school students that meet all the criteria listed in AS 14.03.300 without even approaching any constitutional lines. The statute is thus facially valid even if one could imagine a hypothetical unconstitutional application by a school district.

Alexander's real target seems to be AS 14.03.310—which authorizes student allotments—but that statute is also facially valid because it is likewise capable of being applied without violating Article VII, Section 1. It says that school districts[34] may provide annual student allotments to the parents of correspondence school students "for the purpose of meeting instructional expenses."[35] A parent may use these allotment funds to "purchase nonsectarian services and materials from a public, private, or religious organization" as long as those services and materials are approved by the

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33 Or DEED, if DEED operated a correspondence study program.

34 Again, or DEED, if DEED operated a correspondence study program.

35 AS 14.03.310(a).

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school district, appropriate to the student, aligned to state standards, not partisan or sectarian, and "otherwise support a public purpose."[36] Alexander complains that school districts and parents could use (and allegedly are using) these student allotment funds in ways that unconstitutionally benefit private educational institutions. Complaint ¶¶ 21-28, 55. Alexander observes that the text of AS 14.03.310 does not contain limits preventing such unconstitutional uses. Complaint ¶ 48. Indeed, the Department of Law's opinion recognized that some possible uses that the statute might otherwise permit would be unconstitutional and thus should be avoided—for example, using the funds "to pay tuition for full-time enrollment in a private school."[37]

But a statute's potential to be *applied* unconstitutionally does not render the statute *facially* unconstitutional. A school district could provide student allotments under the statute while also respecting constitutional boundaries because a parent's use of the funds is always subject to the school district's approval[38] and nothing in AS 14.03.310 requires a district to approve any unconstitutional uses of funds.[39] Alexander's arguments challenge only a subset of possible uses—specifically, payment

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[36] AS 14.03.310(b).

[37] State of Alaska, Dep't of Law, Op. Att'y Gen. No. 2021200228 at 2 (July 25, 2022), *available at* https://law.alaska.gov/pdf/opinions/opinions_2022/22-002_2021200228.pdf. Using a correspondence school allotment to pay for full-time enrollment at a private school may actually violate the statute as well as the constitution, because the phrase "materials and services" does not obviously encompass full-time tuition.

[38] AS 14.03.310(b)(1) & (b)(2)(A).

[39] *See* AS 14.03.310(b)(2)(A) (requiring school district approval); 4 AAC 33.421(h) (allotment funds cannot be used without proper approval).

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for private school classes or tuition—but the statute contemplates a range of other uses that do not trigger Article VII, Section 1 concerns. For example, a parent could use funds to pay for classes at a *public* educational institution like the University of Alaska. Or a parent could use funds to purchase needed materials from a private vendor that is not an "educational institution." Or a parent could use funds to pay for tutoring services from a private individual. None of these examples uses "public funds for the direct benefit of any religious or other private educational institution" because none even involves a "religious or other private educational institution." Even some uses of allotment funds that do involve such institutions—for example, paying for discrete private school classes—would not necessarily use funds for the "direct benefit" of that institution, depending on the specific circumstances.[40] The statute therefore has a plainly legitimate sweep and should be upheld against a facial challenge even if some possible applications—like using the funds to pay full-time private school tuition—are unconstitutional.

As the U.S. Supreme Court has explained, "facial challenges are disfavored" because they "often rest on speculation," risk interpretation of statutes "on the basis of

[40] The Department of Law's opinion applied the Alaska Supreme Court's multi-part test from *Sheldon Jackson College v. State*, 599 P.2d 127 (Alaska 1979), to assess whether there would be a "direct benefit" in particular hypothetical factual scenarios. State of Alaska, Dep't of Law, Op. Att'y Gen. No. 2021200228 at 7-14 (July 25, 2022), *available at* https://law.alaska.gov/pdf/opinions/opinions_2022/22-002_2021200228.pdf.

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factually barebones records," and run contrary to principles of judicial restraint.[41] The parties surely disagree on where to draw the lines between constitutional and unconstitutional uses of student allotment funds, but drawing those lines requires an as-applied challenge involving specific facts rather than hypotheticals.[42] As is clear from the Department of Law's opinion, attempting to draw these lines in the abstract is a difficult task.[43]

The Alaska Supreme Court has recognized the value of having facts rather than hypotheticals when drawing constitutional lines. In *State v. ACLU of Alaska*, the ACLU challenged a statute criminalizing marijuana use or possession.[44] Similarly to here, the ACLU's constitutional arguments did not amount to a facial challenge to the statute because they targeted only a subset of applications: the statute criminalized marijuana in general regardless of the location or reason, but the ACLU believed only possession in the home by adults for personal use could not be prosecuted.[45] The ACLU wanted the

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41 *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450 (2008).

42 *See Evans ex rel. Kutch v. State*, 56 P.3d 1046, 1063 n.105 (Alaska 2002) (declining to find a constitutional problem based on "a hypothetical scenario, since the plaintiffs' challenge of the constitutionality of [the statute] is facial"); *cf. Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449–50 (2008) ("In determining whether a law is facially invalid, we must be careful not to go beyond the statute's facial requirements and speculate about 'hypothetical' or 'imaginary' cases.").

43 *See* State of Alaska, Dep't of Law, Op. Att'y Gen. No. 2021200228 at 7-14 (July 25, 2022), *available at* https://law.alaska.gov/pdf/opinions/opinions_2022/22-002_2021200228.pdf.

44 *ACLU of Alaska*, 204 P.3d at 372.

45 *Id.*

Court to "define by pre-determined categories the circumstances under which the statute may not operate."[46] But the Court believed that "adjudication of an actual case, or several actual cases, might cast these categories in a different light," noting the "potential problems with deciding the constitutionality of a statute in the absence of actual facts."[47] The same is true here: the Court cannot reasonably delineate which applications of AS 14.03.300-310 are acceptable without examining some applications, including all the facts and circumstances of those applications.

In sum, because AS 14.03.300-310 can be applied constitutionally and have a plainly legitimate sweep, they are facially constitutional. The Court should therefore dismiss Alexander's facial challenge, rejecting the request for an "order declaring AS 14.03.300-.310 is unconstitutional." Complaint p. 22.

II. Alexander's as-applied challenge to AS 14.03.300-.310 cannot go forward without the implicated school districts as parties.

In addition to advancing a facial constitutional challenge by asking the Court to strike down AS 14.03.300-.310 entirely, the complaint gestures towards an as-applied challenge by asserting that "[e]ven if there was some interpretation that would render AS 14.03.300-.310 facially constitutional, it is still unconstitutional as it is currently being applied by DEED." Complaint ¶ 71. And the complaint contains several allegations about how certain school districts, specifically the Anchorage and Matanuska-Susitna Borough school districts, are applying AS 14.03.300-.310.

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[46] *Id.*

[47] *Id.* at 372-73.

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Complaint ¶¶ 24-28. But an as-applied challenge cannot go forward without the implicated school districts as parties.

Civil Rule 12(b)(7) authorizes a defendant to assert a plaintiff's "failure to join a party under Rule 19" in a 12(b) motion at the pleading stage. Civil Rule 19(a), which concerns indispensable parties, provides that a party whose joinder will not deprive the court of subject-matter jurisdiction must be joined if:

> (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

"An indispensable party is one whose interest in the controversy before the court is such that the court cannot render an equitable judgment without having jurisdiction over such party."[48] "A court's determination of whether a party is indispensable "involves a discretionary balancing of interests."[49] Where an indispensable party has not been joined, the proper remedy is for the Court to order that party's joinder.[50] Here, the school districts are indispensable parties to Alexander's as-applied challenge under both prongs of Civil Rule 19, and the balance of interests favors not proceeding without them.

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[48] *State, Dep't of Highways v. Crosby*, 410 P.2d 724, 725 (Alaska 1966).

[49] *Id.*

[50] *Silvers v. Silvers*, 999 P.2d 786, 792 (Alaska 2000) ("[W]here a party fails to join a necessary party, the appropriate remedy is not dismissal, but rather joinder of the necessary party.").

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First, complete relief on an as-applied challenge cannot be accorded in the school districts' absence. As Alexander's complaint acknowledges, "all current correspondence programs are district-provided." Complaint ¶ 18. DEED does not currently provide any statewide correspondence programs. *Id.* Thus, if any entity is applying AS 14.03.300-.310 in an unconstitutional manner by using funds in prohibited ways, it is a school district. Indeed, the entities the complaint accuses of this are school districts. Complaint ¶¶ 24-28. The Court cannot provide Alexander with complete relief against allegedly unconstitutional applications of AS 14.03.300-.310 without having jurisdiction over the entities that are allegedly violating the constitution. Indeed, the Court cannot even reasonably get all the facts necessary to determine how AS 14.03.300-.310 are being applied if the school districts running the correspondence programs are not parties.

Second, the school districts have "an interest relating to the subject of the action," and attempting to resolve this case in their absence would both impair their interests and subject DEED to a risk of inconsistent obligations. Again, the school districts are the ones operating the correspondence programs under AS 14.03.300-.310. Complaint ¶ 18. Not only do the school districts clearly have an interest in whether this Court declares their actions to be unlawful, but they also receive state funding for their programs by statute and would thus lose funding if those programs were declared fully or partially unconstitutional.[51] Disposition of this case in the school districts' absence

[51] *See* AS 14.17.430 ("Except as provided in AS 14.17.400(b), funding for . . . a district correspondence program, including a district that offers a statewide correspondence study program, includes an allocation from the public education fund in

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would impair or impede the districts' ability to protect their interests in operating their correspondence programs as they see fit and receiving state funding for those programs.

If Alexander wants to pursue an as-applied challenge, litigating this case without the school districts would also impair DEED's interests because DEED cannot reasonably defend the specifics of the districts' programs without their participation. DEED provides research and consultative services to school districts, establishes standards and assessments, administers grants and endowments, and exercises general supervision of public schools.[52] But the legislature has delegated the task of school operation to the local school districts.[53] It is the local districts—not DEED—that determine educational programming, create and maintain their own budgets, and manage their own schools on a day-to-day basis.[54] DEED cannot be expected to stand in for them in litigation over their actions. Moreover, a court order against DEED would

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an amount calculated by multiplying the ADM of the correspondence program by 90 percent.").

[52] AS 14.07.020 (duties of DEED).

[53] AS 14.12.020(b) ("Each borough or city school district shall be operated on a district-wide basis under the management and control of a school board"); AS 14.08.021 (delegating authority to operate public schools to regional attendance areas); *see Tunley v. Municipality of Anchorage Sch. Dist.*, 631 P.2d 67, 75 (Alaska 1980) ("The Anchorage School Board was created by the authority of the state legislature, and is the delegated state authority to govern its school district and manage the operations of the schools within that district."); *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 99-98 (Alaska 2016) (discussing Alaska's history of local control and responsibility for schools).

[54] AS 14.08.101 (education in unorganized boroughs); AS 14.14.090 (duties of school boards, generally); *see, e.g., Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793, 803 (Alaska 1975) (permitting the use of different education systems throughout the State).

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not apply to the districts and could therefore risk subjecting DEED to inconsistent obligations towards the Court and the districts depending on what it requires.

Accordingly, the school districts that Alexander believes are using student allotments unconstitutionally are indispensable parties, and Alexander's as-applied challenge to AS 14.03.300-.310, if that is something they mean to pursue, cannot go forward without them.

CONCLUSION

For these reasons, the Court should dismiss Alexander's facial challenge to AS 14.03.300-.310 and, if Alexander wants to pursue an as-applied challenge, require him to join the implicated school districts as parties.

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