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.	Case No. 3AN-23-04309CI

NOTICE OF SUPPLEMENTAL AUTHORITY AND CONCESSION BY DEFENDANTS

Plaintiffs Edward Alexander, Josh Andrews, Shelby Beck Andrews and Carey Carpenter, by and through counsel Scott M. Kendall and Lauren L. Sherman of Cashion Gilmore & Lindemuth, hereby provide this notice of supplemental authority and concession by Defendants under Alaska Civil Rule 77(l).

On November 16, Attorney General Treg Taylor sent legal guidance to all Alaska School Districts taking the position that Defendants do indeed have a role in specifically directing compliance with the law by all Alaska school districts: "It is the Alaska

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Department of Education and Early Development's duty to make sure this statute is appropriately implemented by each district…."[1]

This legal authority and concession is relevant to and contradicts the following statements in Defendants' briefing:

- School districts are subject *only* to DEED's "general oversight."[2]
- That school districts should not seek direct guidance from DEED, but rather consult with their own "legal counsel."[3]
- That DEED has no role in preventing unlawful use of correspondence school funds, but that only individual school districts can do so.[4]
- That, where a school district operates a correspondence program, DEED generally does not have a role in how that program is operated. Specifically, "…the individual districts are tasked with ensuring that their correspondence programs comport with state law…".[5]
- That, "Alaska law does not provide an affirmative obligation on DEED to seek out alleged violations of law by correspondence school programs." But, instead, DEED is required to rely on each district's assurances of compliance.[6]
- That, "… the districts [not DEED] are responsible for all correspondence program operations, including ensuring that allotments are approved and spent *in accordance with state law.*"[7]
- That districts independently "…have the power and the duty to comply…" with statutes and the constitution.[8]

[1] *See* Exhibit A, attached.
[2] Defendant's March 8, 2023 Motion to Dismiss at 3.
[3] *Id*. at 7.
[4] *Id. passim*.
[5] Defendants' June 2, 2023 Cross-Motion for Summary Judgment at 4-5.
[6] *Id*. at 6.
[7] *Id*. (emphasis added).
[8] *Id*. at 18.

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- That DEED is not even a proper party to a challenge to this proceeding, that only individual school districts are.[9]

- That DEED is not "…liable for the school districts' actions…" in unconstitutional spending of education funds.[10]

CASHION GILMORE & LINDEMUTH
Attorneys for Plaintiffs

DATE: November 21, 2023

/s/ Scott M. Kendall
Scott M. Kendall
Alaska Bar No. 0405019
Lauren L. Sherman
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CERTIFICATE OF SERVICE
I hereby certify that a copy of the foregoing was served via email on November 21, 2023, on the following:

Craig Richards
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By: */s/Todd Cowles*

[9] *Id*. at 21-24.
[10] *Id*. at 24.

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THE STATE of ALASKA
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November 16, 2023

Via U.S. Mail and Email

Dear Alaska School Districts,

Alaska's parental rights and notification statute, AS 14.03.016, went into effect October 2016. That statute requires, in part, that *all* local school boards, "in consultation with parents, teachers, and school administrators, adopt policies to promote the involvement of parents in the school district's education program." These policies must include procedures providing for parental notification "*not less than two weeks* before any activity, class, or program that includes content involving human reproduction or sexual matters is provided to a child."

The purpose of this letter is to reiterate to school districts that you are *required by law* to have policies in place that codify this statutory requirement and that you follow these policies. It is the Alaska Department of Education and Early Development's duty to make sure this statute is appropriately implemented by each school district and that these important parental notification requirements are in place.

It has come to our attention that some school districts may be in violation of this legal requirement by failing to adopt an appropriate policy or by erroneously implementing the requirements of this statute and thereby violating AS 14.03.016. It appears that some school districts have wrongly interpreted "human reproduction or sexual matters" to not include the concept of "gender identity." This interpretation both rejects case law, the common understanding of these terms, and the legislature's intent of passing this statute. The legislature intended "human reproduction or sexual matters" to be a broad concept which does encompass gender identity issues. The concept of "human reproduction or sexual matters" is so broad that the legislature did not attempt to define it; instead, the legislature thought it was easier to simply exclude from the concept of "human reproduction or sexual matters" a few items that would otherwise have been included.[1] The legislature did not exclude issues related to gender identity and therefore,

[1] The legislature exempted 1) sexual abuse and sexual assault awareness and prevention training required under AS 14.30.355 and 2) dating violence and abuse awareness and prevention training required under AS 14.30.356 (also known as "Bree's Law"), acknowledging that they would otherwise be covered by the broad concept of "human reproduction or sexual matters." AS 14.03.016(d)(2).

discussions about gender identity are covered under the statute requiring parental notification "not less than two weeks before any activity, class, or program" which allows parents time to object or to remove their children from these discussions. For a more in-depth legal discussion regarding this issue, please *see* https://law.alaska.gov/pdf/opinions/opinions_2023/23-006_AS1403016.pdf

In addition, nothing in section (c) of AS 14.03.016 allows a teacher, school counselor, district employee or volunteer from offering more than succinct answer to a child's question and certainly does not offer an end-around to the requirements of parental notification. The legislature explicitly intended this parental notification statute to apply to more than just a formal class, applying the statue broadly to any *activity*, *class*, or *program*. The legislature even took it a step further, requiring parental notification even if the activity, class, or program isn't primarily about "human reproduction or sexual matters"—all the law requires is that it has some "*content*" regarding "human reproduction or sexual matters." This means that this requirement can be triggered in any class such as English, Social Studies, and Science, not just Health class.

The obligations found in AS 14.03.016 are further bolstered by AS 14.30.361 which requires that "[b]efore curriculum, literature, or materials related to sex education, human reproduction education, or human sexuality education may be used in a class or program or distributed in a school, the curriculum, literature, or materials must be (1) approved by the school board; and (2) available for parents to review." This statute also puts restriction on who can teach such a class or program – they must be "approved by the school board" and their credentials "must be available for parents to review." The only exceptions to this rule are the same as those enumerated in AS 14.03.016.

In addition, AS 14.03.016 also enumerates several other important parental rights (among others) that school districts are required to enshrine in official district policies. Section (a)(2) allows parents "to object to and withdraw the child from an activity, class, or program" and section (a)(5) permits a parent "to review the content of any activity, class, performance standard, or program."

To reiterate, Alaska law requires school districts to:

1) notify parents not less than two weeks before any activity, class, or program that includes content involving human reproduction or sexual matters, including gender identity;
2) allow parents to opt out of any activity, class, or program that includes content involving human reproduction or sexual matters, including gender identity;
3) prohibit any curriculum, literature, or materials related to sex education, human reproduction education, or human sexuality education to be used in the school district without approval of the specific materials by the school board;
4) make any curriculum, literature, or materials related to sex education, human reproduction education, or human sexuality education available for review by parents;
5) not allow anyone to teach or conduct an activity, class, or program related to sex education, human reproduction education, or human sexuality education without approval of the specific instructor by the school board;
6) make the credentials of any instructor teaching or conducting an activity, class, or program related to sex education, human reproduction education, or human sexuality education available for parent review;
7) allow parents to object to and withdraw their children from an activity, class or program;
8) allow parents to review the content of any activity, class, performance standard, or program; and
9) have policies in place to effectuate points 1 – 8 above.

Failure of school districts to comply is a violation of state statute. Failure of school district employees to comply is a violation of state statute. As school districts navigate compliance with the law, please be mindful of the protections given to public employees who report a violation of state, federal or municipal law, regulation, or ordinance under Alaska's Whistleblower Act[2] or similar municipal ordinance. Please review your district policies, procedures, and actions to make sure they are fully compliant with the law. If you have any questions, please feel free to contact the Department of Law or work directly with your own legal counsel.

Sincerely,

Treg Taylor
Attorney General

[2] Alaska Statute 39.90.100 – 39.90.150.