

MEMORANDUM

State of Alaska Department of Law

TO: Members, State Board of Education and Early Development

THRU: Heidi Teshner, Acting Commissioner
Department of Education and Early Development

FROM: Susan Sonneborn
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SUBJECT: Attorney General's Report

This memorandum describes the status of current litigation involving the Department of Education and Early Development.

1. *DEC Enforcement Matter related to Contamination at Joe Parent Vocational Education Center in Aniak.* The Alaska Department of Environmental Conservation (DEC) identified DEED, DOT&PF, and the Kuspuk School District, as well as the federal government, AT&T Alascom, Lockheed Martin Corporation, and Exelis-Arctic Services, Inc., as potentially responsible parties (PRPs) for polychlorinated biphenyls (PCBs) and trichloroethylene (TCE) contamination at the site of the Aniak Middle School. The contamination dates back to the use of the site by the U.S. Air Force as a White Alice Communications System site from 1958 to 1979.

At a mediation in 2013, the PRPs agreed to the allocations (percentages of responsibility) that each party would bear in an agreement to share past and future clean-up costs for PCB and TCE contamination, although not all issues relating to TCE contamination could be resolved. In 2015, the PRPs executed an agreement (which remains in effect) to maintain the sub-slab-depressurization system and the TCE monitoring program at the site.

In 2016, Consent Decree (a settlement agreement in the form of a court order) was fully executed. In 2017, DOT&PF retained contractors who conducted PCB clean-up work. The TCE remedial investigation report was issued in 2018, and the TCE feasibility study was approved by DEC in 2019. The feasibility study includes a recommended alternative for addressing TCE at the site. DEC also requested the drilling of another monitoring well to assess the underground movement of TCE.

Kuspuk School District has discontinued its use of the building as of January 31, 2022. Due to DOT&PF funding and allocation decisions, the demolition of the building is expected to be completed by the fall of 2023. Well monitoring work is now ongoing. The parties must still resolve the allocation of responsibility for cleanup costs for PCBs that may exist in the slab and under the building, cleanup costs for TCE, and the administrative costs of DEC. Starting on February 9, 2023 Jennifer Currie, Chief AAG for the Environmental Section, will conduct monthly teleconference calls with counsel for all parties to try to get them to agree on apportioning the liability for TCE. The parties are actively engaged in negotiating apportionment of liability, but if an agreement is not reached, the parties may resort to mediation or litigation. AAG Gene Hickey in the Public Corporations & Governmental Services Section is handling this matter.

2. *Alexander et al. v. Acting Commissioner Heidi Teshner, State of Alaska, Department of Education & Early Development.* On January 24, 2023, individual teachers and parents of students enrolled in Alaska school districts filed suit in superior court against Acting Commissioner Heidi Teshner in her official capacity, State of Alaska, Department of Education & Early Development. Plaintiffs alleged in their complaint that the statutes implementing the correspondence study program are unconstitutional on their face and as applied. The complaint referenced the July 25, 2022 Deputy Attorney General opinion on whether publicly funded correspondence schools can pay for services from private schools.

On January 26, 2023 parents of students enrolled in correspondence study programs who have used program allotments to fund private school tuition filed a motion to intervene in the case as defendants. These parents alleged in their motion that they are entitled to intervene as the intended beneficiaries of the allotment program because their rights are not adequately represented by the existing parties. On February 2, 2023 the plaintiffs filed a non-opposition to the motion to intervene and on February 3, 2023 the state filed its own non-opposition. On February 10, 2023 the court granted the motion to intervene. On March 8, 2023 the state filed a motion to dismiss the complaint and on April 28, 2023 plaintiffs responded by filing an Opposition to State of Alaska's Motion to Dismiss/Cross Motion for Summary Judgment. The State has filed an opposition and its own cross motion for summary judgment; and the intervenors have opposed the plaintiffs' motion making the additional argument that if Article IX, section 1 of the Alaska Constitution is interpreted to prohibit state funding for full time private school tuition, then that provision violates the federal constitution's first and fourteenth amendments. Plaintiffs' response is due July 21, 2023 and we expect briefing to be complete by the middle of August. Chief AAG Margaret Paton-Walsh has primary responsibility for this case.