

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

3 EDWARD ALEXANDER, JOSH
4 ANDREWS, SHELBY BECK
5 ANDREWS & CAREY CARPENTER,

6 Plaintiffs,

7 v.

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

12 Defendant,

Case No. 3AN-23-04309 CI

13 v.

14
15 ANDREA MOCERI, THERESA
16 BROOKS and BRANDY
PENNINGTON,

17 Intervenor.

18 **AMICUS BRIEF OF ANCHORAGE SCHOOL DISTRICT**
19 **IN SUPPORT OF STAY OF EFFECTIVE DATE OF JUDGMENT**

20 **INTEREST OF AMICUS CURIAE**

21 The Amicus Curiae is Alaska's largest school district.¹ In light of this Court's
22 recent decision on summary judgment that Alaska's correspondence school allotment
23
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25 _____
26 ¹ No party's counsel authored this brief in whole or in part, and no party, party's counsel, or other person made a monetary contribution to the brief's preparation or submission.

1 program is facially unconstitutional, Anchorage School District is interested in ensuring
2 families with students attending the Anchorage School District (“ASD”) are not left
3 shouldering educational expenses this school semester which may have already been
4 incurred in reliance on statutes that this Court has now declared unconstitutional. ASD’s
5 interests also include minimizing the adverse educational impact on learning plans for
6 students in the correspondence program who need and relied on the educational services
7 purchased with the understanding the allotment funds would pay for those services.
8
9 ASD does not take a position on the merits of this constitutional litigation and this brief
10 should not be read as supporting any party to this litigation. But ASD has a strong
11 interest in seeking an orderly process that does not leave parents and families
12 shouldering an unexpected financial hardship and disrupting learning plans for
13 students.
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16 INTRODUCTION

17 If not stayed, this Court’s order ruling Alaska’s correspondence school statutes
18 unconstitutional will leave Anchorage families shouldering the costs of educational
19 expenses they incurred this school semester in good faith under the prevailing status
20 quo. Such a result would impose a substantial financial hardship on ASD families and
21 disrupt educational plans for students. As Plaintiffs have suggested, this Court should
22 prevent that result with a stay of the effective date of its ruling until at least the start of
23 the new fiscal year, July 1, 2024.
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1 Generally, ASD families who utilize Alaska’s correspondence school program
2 incur the costs of non-ASD educational expenses up front and then seek reimbursement
3 from ASD. These costs are for things like textbooks, educational courses, music
4 lessons, physical education equipment, swimming lessons, educational travel, and
5 much more. Families incur these costs up front, and then go through ASD’s
6 reimbursement process. Typically, that process occurs at the end of each semester with
7 parents submitting requests the month before the end of the semester. For at least one
8 ASD correspondence program, the deadline for submission of reimbursement requests
9 for this semester is April 19, 2024. This means that many ASD correspondence-school
10 families have incurred educational costs but have not submitted reimbursement
11 requests, let alone received reimbursement, or they have recently submitted requests
12 and are now awaiting payment.
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16 The Court’s April 12, 2024 ruling invalidates the statutes governing the
17 correspondence program. With that ruling, ASD is left with a Hobson’s choice: does
18 ASD continue to process payments according to a state statutory program that this Court
19 has deemed unlawful, or does ASD leave parents holding the bag with unreimbursed
20 education expenses that parents incurred in good faith reliance on the existing statutes?
21 ASD should not have to risk making unlawful payments, and families should not be left
22 shouldering the costs for educational expenses they incurred in good faith under the
23 status quo before this Court’s ruling. ASD respectfully requests the Court issue a stay
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1 of its decision until at least July 1, 2024, so that ASD can reimburse families who
2 incurred expenses in the 2023-2024 school year.

3 4 **DISCUSSION**

5 The Alaska Constitution addresses education at article VII, section 1:

6 The legislature shall by general law establish and maintain a system of
7 public schools open to all children of the State, and may provide for other
8 public educational institutions. Schools and institutions so established
9 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.*²

10 At issue in this case was whether Alaska’s statutes governing the correspondence
11 school program ran afoul of the emphasized sentence’s prohibition against public funds
12 used for the direct benefit of non-public educational institutions. This Court ruled that
13 AS 14.03.300 through 14.03.310 were facially unconstitutional because they were
14 “drafted with the express purpose of allowing purchases of private educational services
15 with the public correspondence student allotments.”³

16
17 Correspondence schools have long been part of Alaska’s public education
18 system dating back to territorial days.⁴ In the 1990s, Alaska school districts began
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22 ² Alaska Const. art. VII, § 1 (emphasis added).

23 ³ Order Denying Defendant’s Motion to Dismiss and Granting Plaintiffs’ Motion for
Summary Judgment at 19 (Apr. 12, 2024) (“Order”).

24 ⁴ 2 Proceedings of Alaska Constitutional Convention at 1525 (Jan. 9, 1956) (delegate
25 Jack Coghill discussing his familiarity “with the Calvert course, that the Territorial Department
26 of Education, that is one of their recognized correspondence courses for the outlying areas, and
if any family on a CAA remote station or someone on a remote part of the Yukon River, etc.,
would want to further the education of their children, write to the Commissioner of Education

1 implementing public correspondence schools with the State of Alaska, Department of
2 Education and Early Development (“DEED”) supervising the programs.⁵ In 2014, the
3 Alaska Legislature enacted a statute authorizing districts to “provide an annual student
4 allotment to a parent or guardian of a student enrolled in the correspondence study
5 program for the purpose of meeting instructional expenses for the student.”⁶ Under this
6 statutory framework that remains today, a student allotment may be used to “purchase
7 nonsectarian services and materials from a public, private, or religious organization,”⁷
8 if the services and materials are required for a course of study in the student’s individual
9 learning plan and meet other strict criteria.⁸

12 In July 2022, the State of Alaska Department of Law issued a legal opinion to
13 DEED on the constitutionality of Alaska’s statutes governing the correspondence
14 school program.⁹ In that opinion, the State discussed different scenarios and provided
15 a likelihood of each being constitutional, as follows:
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19 and they are referred to the Calvert course, and in higher institutions it would be the
20 correspondence courses from the University of Nebraska.”).

21 ⁵ See 2005 Inf. Op. Att’y Gen. (Sep. 20, 2005; File No. 663-05-0233), 2005 WL
22 2751244, at *1.

23 ⁶ AS 14.03.310(a).

24 ⁷ AS 14.03.310(b).

25 ⁸ AS 14.03.310(b) (in addition to being consistent with the student’s individual learning
26 plan or ILP, the material and services must also be district approved, appropriate, and aligned
with state standards; comply with statutory prohibitions on advocating partisan, sectarian, or
denominational doctrines; comply with standards on nondiscriminatory and unbiased
textbooks and instructional materials; and “otherwise support a public purpose.”) *Id.*

⁹ See 2022 Op. Att’y Gen. (July 25, 2022), 2022 WL 3017698.

- “Using public correspondence school allotments to pay most or all of a private educational institution’s tuition is almost certainly unconstitutional.”¹⁰
- “If the purpose [of spending a portion of an allotment] is to enhance or support the home-based correspondence school education guided by a parent or guardian with oversight from a public correspondence teacher, there is a strong argument that spending for this purpose is permissible.”¹¹
- “Using allotment money for one or two classes to support a public correspondence school program is likely constitutional, whereas using public school allotment money to pay for most or all of a private school’s tuition would not be.”¹²

ASD relied on the Department of Law’s positions in this area. For example, on June 29, 2023, ASD’s Director of Charter Schools issued guidance to ASD’s home-school correspondence programs that disallowed the use of any allotment monies that would supplant, instead of support, public education.¹³ In turn, families with students using these correspondence programs relied on ASD’s guidance for the 2023-2024 school year.

This Spring 2024 Semester, ASD has 2,004 students enrolled in correspondence programs.¹⁴ Many of the families of these students have incurred correspondence

¹⁰ *Id.* at *8.

¹¹ *Id.* at *9.

¹² *Id.*

¹³ See LTR from Dr. Hlasny to Family Partnership Correspondence, Frontier Charter School, and AKChoice K-12 Learning (June 29, 2023), attached hereto as Exhibit A.

¹⁴ See Declaration of Andrew Ratliff, ¶ 3 (Apr. 17, 2024).

1 school costs in reliance on the guidance from ASD which relied, in part, on the
2 Department of Law’s guidance. Many have not been reimbursed for correspondence
3 school costs for this semester.¹⁵ Entry of a stay until at least July 1, 2024, will permit
4 ASD to reimburse these families for costs incurred under the status quo. Then, for next
5 semester, families will have forewarning that correspondence school costs are a risk
6 they can either incur or forego. In light of the Court’s April 12 Order invalidating the
7 statutes that confer ASD with authority to reimburse these families for incurred costs,
8 ASD has no legal authority to process these reimbursements.¹⁶

11 Alaska Civil Rule 62 governs the stay of judgments. That rule has different
12 standards for the different types of judgments entered (monetary, non-monetary,
13 injunctive relief, etc.), as well as different standards for judgments against government
14 agencies like DEED. However, the Court need not discern the proper standard and
15 whether it has been met, as, here, it appears all parties to the case agree that a stay is
16 warranted until at least July 1, 2024. In our adversarial system, it is axiomatic that if
17 the parties agree to a stay of the judgment, the Court may grant the stay on that basis:
18 “The parties to a case may stipulate to stay the enforcement of the judgment entered in
19 the case.”¹⁷

22 Moreover, the standard for a stay under Civil Rule 62(c) until July 1, is met

24 ¹⁵ See *id.*

25 ¹⁶ *Id.*, ¶ 5.

26 ¹⁷ 30 Am. Jur. 2d Executions, Etc. § 20 (WL current through February 2024).

1 here.¹⁸ In considering whether to grant a stay pending appeal, trial courts consider
2 essentially the same criteria that apply in considering an application for preliminary
3 injunction—namely (1) whether the parties seeking a stay have raised serious and
4 substantial questions going to the merits of the case, (2) whether irreparable injury will
5 occur absent a stay, and (3) whether the parties will be adequately protected.¹⁹
6

7 Here, there are serious and substantial questions going to the merits of the
8 constitutionality of AS 14.03.300 and .310. This Court recognized those questions in
9 its April 12 Order. Those questions are what constitute a “direct benefit” and what is a
10 “private educational institution” under the Alaska Constitution. Additionally, the State
11 defendants have raised serious and substantial questions in support of their position.
12

13 School districts and families across Alaska face irreparable injury if the Court’s
14 April 12 Order remains effective prior to the end of fiscal year 2024.²⁰ In ASD alone,
15 over 2,000 families have incurred up-front costs for their students to complete
16 correspondence schooling pursuant to their individualized learning plans or ILPs. If
17 the Court’s Order is made effective immediately, school districts like ASD will have
18 no legal authority upon which to reimburse these families for these costs. There is no
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21

22 ¹⁸ See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1249 n. 21 (Alaska 1995);
23 see also *RGB Bush Planes, LLC v. Alaska Public Offices Commission*, 2014 WL 10187629,
*1 (Alaska Super. Ct. June 17, 2014).

24 ¹⁹ *Id.* at *1.

25 ²⁰ *State v. Kluti Kaah Native Village of Copper Center*, 831 P.2d 1270, 1273 n.5 (Alaska
26 1992) (defining “irreparable injury” as any damage that there exists no certain pecuniary
standard for the measurement of damages).

1 remedy at law that can remedy the mistrust this result is likely to engender between
2 school districts and their families. Nor is there any adequate remedy at law for the
3 financial hardship that will befall these families. Finally, all parties to this case are
4 adequately protected from entry of a stay. The prevailing parties themselves have asked
5 for a stay. And no party will be injured by a short stay to accommodate the orderly
6 reimbursement of costs incurred by families who relied on the positions of school
7 districts and the State. A stay of the effective date of the Order should be entered until
8 at least July 1, 2024.
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11 CONCLUSION

12 For the foregoing reasons, ASD respectfully urges the Court to enter a stay of
13 the effective date of the April 12 Order until at least July 1, 2024.
14

15 DATED at Anchorage, Alaska, this 17th day of April, 2024.

16 SCHWABE, WILLIAMSON & WYATT, P.C.
17 Attorneys for Amicus Curiae Anchorage School
18 District

19 By: 

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msinger@schwabe.com

Lee C. Baxter, ABA No. 1510085

lbaxter@schwabe.com

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 17th day of April, 2024, a
3 true and correct copy of the AMICUS BRIEF OF
4 ANCHORAGE SCHOOL DISTRICT IN SUPPORT OF STAY OF
EFFECTIVE DATE OF JUDGMENT (10 pages) was served
upon the following by:

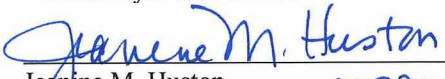
5 ☐ US Mail ☒ **Email** ☐ Fax ☐ Hand-Delivery

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Anchorage School District

Education Center

5530 E. Northern Lights Blvd. • Anchorage, AK 99504 • 907-742-4000 • www.asdk12.org

TO: Dr. Jessica Parker, Principal, Family Partnership Correspondence
Gerald Finkler, Principal, Frontier Charter School
Lucas Frost, Principal, AKChoice K-12 Learning

DATE: June 29, 2023

FROM: Dr. Jason Hlasny, Director

SUBJECT: Use of Public Charter/Correspondence Student Allotments

The purpose of this memo is to clarify district and administrative procedure consistent with the Alaska Constitution, Alaska Statute, and the July 2022 Deputy Attorney General guidance as it relates to the appropriate implementation and use of student allotments and private school education.

Under Alaska law, correspondence schools receive funding through the local school district in which they reside. In turn, correspondence schools usually allocate an allotment of funds for each student, which the student can spend for certain materials to fulfill a student's individual learning plan.

The Alaska Constitution provides: "No money shall be paid from public funds for the direct benefit of any religious or other private educational institution." The Alaska Legislature has provided that student allotments for correspondence students may not be used for sectarian services or materials. Alaska law requires each school district to ensure that allotment monies are not used in a manner that violates Alaska law.

The following are uses of allotments **not permitted** by the Anchorage School District:

- Student is enrolled as a full-time student at a private school and the student's allotment is used to pay any portion of the private tuition.
- More than half of a correspondence student's allotment is used to pay for private school tuition, materials, and fees for non-sectarian classes.
- Any portion of the allotment is used to pay for sectarian courses or materials.

The following are uses of allotments permitted by the Anchorage School District:

- Student is enrolled in a public correspondence school and half or less of the student's allotment is used to pay for part-time enrollment to take nonsectarian courses at a private school.
- Student is enrolled in a public correspondence school and the student's allotment is used to pay for extracurricular activities such as swimming lessons, attendance at music or drama performances, or participation in athletic competitions.

Cc: Dr. Jharrett Bryantt, Superintendent
Sven Gustafson, Chief Academic Officer
Andy Ratliff, Chief Financial Officer
Jim Anderson, Chief Operating Officer
Deborah Engles, Senior Director, Risk Management & Safety

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Case No. 3AN-23-04309 CI

15 v.

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17 BROOKS and BRANDY
18 PENNINGTON,

19 Intervenor.

20 **DECLARATION OF ANDREW RATLIFF**

21 STATE OF ALASKA)
22) ss.
23 THIRD JUDICIAL DISTRICT)

24 I, Andrew Ratliff, having been first duly sworn upon oath, depose and state as
25 follows:

26 1. All statements in this declaration are based on my own personal
knowledge.

2. I am the Chief Financial Officer of the Anchorage School District. ASD's

SCHWABE, WILLIAMSON & WYATT, P.C.
420 L Street, Suite 400
Anchorage, AK 99501
Telephone: (907) 339-7125

1 finance department processes reimbursements submitted by families with students
2 enrolled in ASD's correspondence school programs.

3
4 3. ASD has three correspondence school programs. As of the end of March
5 2024, there were 2,004 students enrolled in those programs. While I do not have the
6 exact numbers broken out, many of these families have not yet been reimbursed for
7 expenses incurred for the 2023-2024 school year. Correspondence families within ASD
8 have already submitted reimbursements approximating \$150,000, but ASD has not yet
9 processed these requests. And more requests will be submitted. ASD will continue to
10 receive reimbursement requests for correspondence school expenditures until at least
11 mid-June.
12

13
14 4. Additionally, ASD has entered into contractual agreements with
15 established vendors to directly pay for services for correspondence school students.
16 These contracts are with providers for services like tutoring, music and art lessons, and
17 physical education activities like gymnastics and swimming lessons. ASD has not yet
18 paid all of these vendors for services provided to correspondence students.
19

20 5. I understand that the superior court has ruled that AS 14.03.310 is
21 unconstitutional in its entirety. That is the statute that ASD uses to reimburse families
22 for correspondence school costs as well as to pay vendors with which ASD has
23 established direct contractual agreements. Without that statute, ASD's finance
24 department is unaware of any legal authority to fulfill reimbursement requests and to
25 pay these vendors.
26

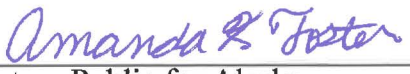
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FURTHER YOUR AFFIANT SAYETH NAUGHT.

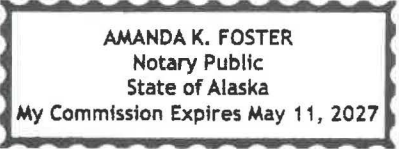


Andrew Ratliff

SUBSCRIBED AND SWORN TO before me this 17 day of April, 2024, at
Anchorage, Alaska.



Notary Public for Alaska
My Commission Expires: 5/11/2027



1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 17th day of April, 2024, a
3 true and correct copy of the DECLARATION OF ANDREW
RATLIFF (4 pages) was served upon the following by:

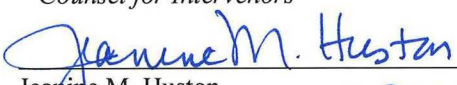
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