

# Holland & Knight

420 L Street, Suite 400 | Anchorage, AK 99501 | T 907.263.6300 | F 907.263.6345  
Holland & Knight LLP | [www.hklaw.com](http://www.hklaw.com)

Howard S. Trickey  
(907) 263-6365  
[howard.trickey@hklaw.com](mailto:howard.trickey@hklaw.com)

July 24, 2019

Governor Michael J. Dunleavy  
Office of the Governor  
550 West 7th Avenue, Suite 1700  
Anchorage, AK 99501  
(*VIA HAND DELIVERY*)

Kevin G. Clarkson, Attorney General  
Office of the Attorney General  
1031 West 4th Avenue, Suite 200  
Anchorage, AK 99501  
(*VIA EMAIL AND HAND DELIVERY*)

Dr. Michael Johnson, Commissioner  
Department of Education & Early Development  
P.O. Box 110050  
Juneau, Alaska 99811-0500  
(*VIA EMAIL AND U.S. MAIL*)

Re: *Kasayulie v. State* Consent Decree and Settlement Agreement

Dear Governor Dunleavy, Attorney General Clarkson & Dr. Johnson:

This law firm represents the Coalition for Education Equity (“CEE”).<sup>1</sup> This letter is to (a) notify you that, as a result of Governor Dunleavy’s recent action to veto 50% of the REAA School Construction Fund in HB 39 (Operating), the State is in breach of the *Kasayulie* Consent Decree entered in Case No. 3AN-97-03782 CI on July 5, 2012, and (b) demand that you immediately take the necessary steps and measures to restore to the REAA School Construction Fund the \$19,694,500 in funds that were vetoed from HB 39.

---

<sup>1</sup> Coalition for Education Equity was formerly known as Citizens for the Educational Advancement of Alaska’s Children (“CEAAC”).

Governor Dunleavy  
Attorney General Clarkson  
Commissioner Johnson  
July 24, 2019  
Page 2

In *Kasayulie v. State*, Case No. 3AN-97-03782 CI, the plaintiffs, including CEE, asserted that the State of Alaska's method of funding capital projects for education in rural areas of the state violated the Alaska Constitution and the State's trust obligations under the public school land trust. In that case, the Superior Court entered a ruling that the State's history and practice in funding construction of rural school facilities violated its obligations under the Education and Equal Protection Clauses of the Alaska Constitution. In 2011, the *Kasayulie* Plaintiffs and the State of Alaska entered into a Consent Decree and Settlement Agreement to resolve the longstanding litigation over the State's unconstitutional method of funding capital projects for REAA School Districts.

The *Kasayulie* Consent Decree came about because the Legislature was willing to comply with Judge Reese's ruling by remedying the Alaska Constitutional violations with the passage of SB 237. SB 237 established a formula under AS 14.11.025 for determining the amount of money available each year for expenditure for rural school capital projects. To provide rural schools with access to adequate school facilities funding, SB 237 contained a formula that was based on a percentage of the eligible debt reimbursement funding to urban schools. A sustainable funding source was needed because REAA Districts have no taxing authority or tax base. In vetoing 50% of the funds appropriated by the Legislature in accordance with the formula under AS 14.11.025, the Governor has breached the *Kasayulie* Consent Decree and has placed the State in breach of its constitutional duties under the Education and Equal Protection Clauses of the Alaska Constitution to provide sustainable capital funding for rural schools.

The core constitutional violation in the *Kasayulie* case was the failure to adequately fund rural school construction for REAA School Districts. Judge Reese ruled that under the Education Clause of the Alaska Constitution, Article VII, Section 1, the State has an affirmed duty to provide public education. The constitutional duty requires adequate education facilities to permit children to learn. Adequate school facilities are a critical vehicle in the implementation of the school mission. Judge Reese ordered the State to cure the constitutional violations by funding facilities and adopting a program to provide sustainable access to capital funds for rural schools.

In the *Kasayulie* Consent Decree and Settlement Agreement, CEE acknowledged that the REAA School Construction Fund established by AS 14.11.025 and 14.11.030 provided a mechanism for insuring rural schools access to adequate capital funds, provided

Governor Dunleavy  
Attorney General Clarkson  
Commissioner Johnson  
July 24, 2019  
Page 3

the Legislature and Governor appropriated funds on an annual basis. The Rural School Construction Fund must be maintained at a level and in an amount to allow for continuous construction of projects based on the State's priority list. REAA Districts do not have the option to issue bonds for school construction because the Districts have no taxing authority or tax base.

You may consider that Governor Dunleavy's veto of 50% funding to the REAA School Construction Fund passes Constitutional muster because his veto was accompanied by a veto of 50% of the appropriation for school debt reimbursement. But cutting the debt reimbursement appropriation by 50% and the REAA School Construction Fund by 50% does not meet the State's constitutional obligation, even though superficially the two programs are being equally harmed by the 50% reduction. City and Borough Districts can always issue bonds for school construction and seek debt reimbursement for the bonds from the State. City and Borough school construction can proceed whether the State funds the debt reimbursement program or not. In contrast, REAA School Districts do not have bonding authority and must rely solely on legislative appropriations to sustain needed capital projects. REAA District capital projects cannot proceed or be funded without full funding of the REAA School Construction Fund at sustainable levels. As a result of the vetoes, rural schools on the priority ranking list will not be funded.

The REAA School Construction Fund was established to provide a constitutionally sustainable source of revenue for REAA capital construction projects to insure adequate school facilities for students to learn. The School Construction Fund must be fully funded annually for the State to comply with its constitutional obligations under the *Kasayulie* Consent Decree and Settlement Agreement.

In the event the State is unwilling or unable to remedy these breaches, the *Kasayulie* Consent Decree provides that the "plaintiffs retain the right to reopen this action and litigate whether the State has met the requirements of the law for funding school construction projects, with all parties preserving their rights and claims to the same extent as they exist at the time of this agreement." If necessary, CEE will reopen the litigation to protect the constitutional right of rural students to learn in adequate school facilities.

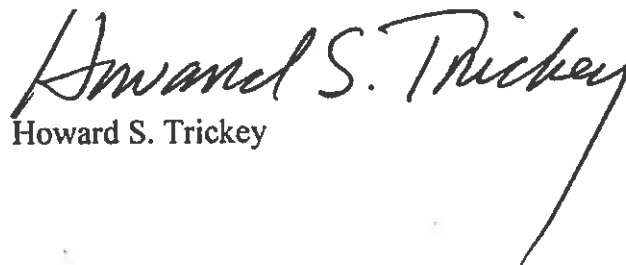
Please advise CEE immediately as to what steps the Governor will take to fully restore the REAA School Construction Fund to the full amount appropriated by the

Governor Dunleavy  
Attorney General Clarkson  
Commissioner Johnson  
July 24, 2019  
Page 4

Legislature. If CEE is not satisfied with the steps the Governor proposes to take to remedy this breach, CEE will pursue appropriate remedies with the court.

Sincerely,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, reading "Howard S. Trickey". The signature is written in a cursive style with a long, sweeping tail that extends downwards and to the right.

Howard S. Trickey

HST/jmh

cc: Sen. Cathy Giessel, President  
Sen. Lyman Hoffman, Majority Leader  
Sen. Tom Begich, Minority Leader  
Rep. Bryce Edgmon, Speaker of the House  
Rep. Steve Thompson, Majority Leader  
Rep. Lance Pruitt, Minority Leader  
Sarah Sledge, Executive Director  
Coalition for Education Equity  
Donna Arduin, Director  
Office of Management & Budget

#69283397\_v3