IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

WILLIE AND SOPHIE KASAYULIE, et al.,	)	
Plaintiffs,	)	
v.	)	
STATE OF ALASKA,	)	
Defendant.	)	
	)	3AN-97-3782 CI

CONSENT DECREE AND SETTLEMENT AGREEMENT

WHEREAS, a civil action has been brought alleging that the State of Alaska's method of funding capital projects for education is void under the Alaska Constitution and violates Title VI of the Civil Rights Act of 1964, and that the State breached trust obligations arising from the public school land trust; and

WHEREAS, the parties, in order to put an end to lengthy litigation, wish to resolve this matter by means of settlement;

NOW THEREFORE, the parties, through their attorneys, subject to the approval and order of this Court, hereby agree as follows:

1. Jurisdiction is vested in this Court by AS 22.10.020.

2. The plaintiffs in this matter are individual parents of students in rural Alaskan schools, six rural Alaskan Regional Educational Attendance Areas, and an educational advocacy organization, Citizens for the Educational Advancement of Alaska's Children.

3. The defendant is the State of Alaska.

4. The original complaint in this action was filed on May 20, 1997. It alleged that, at the time this lawsuit was filed, many of the physical facilities within plaintiff school districts were in dire need of replacement and/or major maintenance, exhibiting widespread deterioration, physical dangers, structural deficiencies, inability to satisfy relevant code requirements, and a lack of sufficient instructional space.

5. The complaint further alleged that plaintiff school districts had neither taxable real property nor legal authority to raise capital funds through a local capital tax levy or bond issue. Plaintiffs asserted that most municipal school districts, which had bonding capacity sufficient to raise capital funds, had access to state funding for capital projects through the state's debt reimbursement program under AS 14.11.100. Plaintiffs further asserted that, by the time this lawsuit was filed, there existed widespread disparities between facilities in plaintiff school districts and those in districts with the ability to pass local bond issues to raise the necessary capital for facilities funding, major maintenance and renovation.

6. In a second amended complaint filed on May 20, 1998, the Plaintiffs added allegations regarding the public school land trust, including allegations that the inadequate funding of school district plaintiffs was a breach of the State's trust obligations.

7. In 1999, both parties filed Motions for Summary Judgment on both issues.

8. On September 1, 1999, Superior Court Judge John Reese held 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, and Title VI of the Civil Rights Act.

9. On the same day, September 1, 1999, the Court also held that the State had breached its trust obligations under the state public schools land trust when it converted the trust from a land trust to a monetary trust without valuing the land. The Court held that an appraisal of the lands in question must be conducted before further proceedings on the State's breach. By the time of the Court's decision, the State and Plaintiffs had already begun a cooperative process for valuing public school trust lands.

10. On March 27, 2001, following a motion for reconsideration, the Court reaffirmed its rulings on the facilities issue, and, in the same order, rejected plaintiffs' 54(b) motion for partial final judgment on the facilities issues.

11 Because valuation of trust land had to be completed before the remedy phase of the case could proceed, the Court held the case in abeyance pending the completion of the valuation, and to date has not ordered any remedy on either the facilities issue or the trust issue. The Court did not issue a final judgment, so the State could not appeal the rulings to the Alaska Supreme Court.

12. The parties worked together in good-faith to cooperatively accomplish the valuation. Experts were hired, who analyzed land title issues and conducted initial studies on the valuation. It became clear, however, that the cost of the

proposed valuation process would be high, and the Court had ruled that under trust law, this cost would be paid out of trust money. Moreover, as the parties studied the preliminary data, it became clear that little or no benefits would be achieved from having a full appraisal. At the same time, the State had approved general obligation bonds for construction of multiple rural school facilities in plaintiff school districts.

13. In 2010, the Legislature, in response in part to the Court's order regarding perceived constitutional violations relating to the funding of rural school construction, passed SB 237, which established a formula under statute (AS 14.11.025 and AS 14.11.030) for money to be available each year for funding of school construction in Regional Educational Attendance Areas. The formula was based on a percentage of the debt funding to urban schools under AS 14.11.100(a). The legislation provided that the statutes would become effective in 2012. The adoption of these statutes paved the way for settlement of this case by establishing a systematic mechanism for identifying funding amounts for rural school construction.

14. The parties have reached agreement to settle and dismiss this case by providing for the funding, over a four-year period, of the five rural school construction projects that are ranked as the highest priority school construction projects on the Department of Education and Early Development's construction list. The parties recognize, however, that they cannot bind future legislatures, and that the Governor must retain discretion for the introduction and vetoing of legislation in future years. Accordingly, this settlement first provides that legislation will be introduced in the *current* session for two school projects, and, second, provides for an expectation that

legislation will be introduced in *future* legislative sessions for the funding of the three additional rural school projects described in this settlement. If the funding for the five schools does not occur as described in this agreement, the plaintiffs reserve the right to reopen this litigation.

15. The parties agree that the remedies provided in this Consent Decree are in the best interests of the affected students and districts, provided that the school construction projects identified in this settlement are funded.

16. The parties agree that no benefit will be obtained by further litigation of the trust issue. It is in the public interest, however, to share and build on the valuation work already completed by experts on behalf of the parties.

17. In entering into this consent decree, neither party admits any wrongdoing or liability.

CONSENT DECREE

1. The State will include in the Governor's proposed capital appropriations budget bill for FY2013 the following two school construction projects:

(a) Emmonak K-12 school renovation/addition; appropriation to be effective July 1, 2012. (Amount of appropriation to be determined by DEED's November 2011 Capital Improvement Project process; for reference, the cost of this project from DEED's November 2010 list was $39,251,867).

(b) Koliganek K-12 school replacement; appropriation to be effective July 1, 2012. (Amount of appropriation to be determined by DEED's November 2011 CIP process; cost of this project from DEED's November 2010 list was $23,067,360).

2. Subject to the Governor's discretion, the State will include in the Governor's proposed capital appropriations budget bill for FY2014 the following school construction project:

(a) Nightmute K-12 school renovation/addition; appropriation to be effective July 1, 2013. (Amount of appropriation to be determined by DEED's November 2012 CIP process; cost of this project from DEED's November 2010 list was $23,653,411).

3. Subject to the Governor's discretion, the State will include in the Governor's proposed capital appropriations budget bill for FY2015 the following two school construction projects:

(a) Kwethluk K-12 school replacement; appropriation to be effective July 1, 2014. (Amount of appropriation to be determined by DEED's November 2013 CIP process; cost of this project from DEED's November 2010 list was $45,222,119).

(b) Kivalina K-12 school renovation/addition; appropriation to be effective July 1, 2015. (Amount of appropriation to be determined by the Department of Education and Early Development's November 2013 Capital Improvement Project process; for reference, the cost of this project from DEED's November 2010 list was $14,724,714). However, if the Legislature declines to fund, or places contingencies on the Kivalina school project because of concerns about erosion or viability of the school site, the lack of funding or contingencies will have no effect on the settlement, and cannot be used by plaintiffs to reopen this litigation.

4. If the projects described in this settlement are not funded by the Alaska Legislature within the time periods described, then 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. Notwithstanding the foregoing, the parties agree that this reopening provision shall not be triggered in the event that the Legislature does not fund, or otherwise places contingencies upon the funding of, the construction of the Kivalina school because of concerns about erosion or the viability of the Kivalina school site.

5. The parties acknowledge that the Court identified a need to remedy perceived constitutional violations through a funding mechanism to address the school construction requirements of those rural school districts that lack bonding or taxing capabilities. The parties agree that the funding mechanism currently set forth in AS 14.11.025 and AS 14.11.030 provides that remedy.

6. In addition to dismissal with prejudice of all claims related to public school land trust issues as set forth in paragraph 7, below, plaintiffs:

(a) Will provide the State with a copy of all valuation work done by their experts, and will cooperate with the State to present land valuation information to the Court; however, plaintiffs will not be obligated to actively participate in any further or future land valuation efforts undertaken by the State; and

(b) Will not oppose efforts by the State to complete the valuation of the public school trust lands; and

(c) Will not oppose the formal removal from public school trust status of any land received by the State after July 1, 1978, including 906(b) ANILCA lands and approximately 2,800 acres otherwise conveyed by the federal government.

7. The Kasayulie plaintiffs prevailed in superior court on a constitutional claim which became a catalyst for this settlement. *See DeSalvo v. Bryant*, 42 P.3d 525, 530 (Alaska 2002). They are therefore entitled to full reasonable attorney's fees under the law. *Dansereau v. Ulmer*, 955 P.2d 916, 920 (Alaska 1998). The Department of Law will include in the judgment bill introduced in the FY2013 session an appropriation for payment of plaintiffs' full reasonable attorney's fees, not to exceed $500,000. Plaintiffs will provide an accounting of fees no later than September 15, 2011, and will cooperate to ensure that the fees are compensable and were not previously paid under an earlier award by the Court.

8. The parties shall stipulate to dismissal with prejudice of all of the claims raised by plaintiffs in this matter, to be effective on the effective date of the legislation providing for appropriations for the school construction projects described in paragraph (1) of this Consent Decree. As described in paragraph (1)(b), however, the dismissal will become effective even in the event the legislature decides to not fund, or to place contingencies on, the Kivalina school project because of concerns about erosion or viability of the Kivalina school site. Notwithstanding this dismissal, the parties agree that the Court shall retain jurisdiction of this action until July 1, 2015, or until the appropriations provided for in this Consent Decree have been substantially adopted, but that no further action before the Court shall occur except pursuant to

(a) a motion to reopen under paragraph (4) of this Consent Decree; or

(b) a joint motion requesting permission of the Court for further proceedings.

9. The parties agree to work together in good faith to fully implement this Consent Decree and Settlement Agreement.

Accepted for Plaintiffs:

August 10, 2011 Date	Willie Kasayulie Willie Kasayulie Plaintiff
Aug. 10, 2011 Date	Sophie N. Kasayulie Sophie Kasayulie Plaintiff
_____ Date	_____ Paul Mike Plaintiff
_____ Date	_____ Maryann Mike Plaintiff
_____ Date	_____ Arthur Heckman Plaintiff
_____ Date	_____ Ruth Heckman Plaintiff

(a) a motion to reopen under paragraph (4) of this Consent Decree; or

(b) a joint motion requesting permission of the Court for further proceedings.

9. The parties agree to work together in good faith to fully implement this Consent Decree and Settlement Agreement.

Accepted for Plaintiffs:

_____ Date	_____ Willie Kasayulie Plaintiff
_____ Date	_____ Sophie Kasayulie Plaintiff
09/20/11 Date	Paul Mike Paul Mike Plaintiff
Sept. 20, 2011 Date	Mary Ann Mike Maryann Mike Plaintiff
_____ Date	_____ Arthur Heckman Plaintiff
_____ Date	_____ Ruth Heckman Plaintiff

(a) a motion to reopen under paragraph (4) of this Consent Decree; or

(b) a joint motion requesting permission of the Court for further proceedings.

9. The parties agree to work together in good faith to fully implement this Consent Decree and Settlement Agreement.

Accepted for Plaintiffs:

_____ Date	_____ Willie Kasayulie Plaintiff
_____ Date	_____ Sophie Kasayulie Plaintiff
_____ Date	_____ Paul Mike Plaintiff
_____ Date	_____ Maryann Mike Plaintiff
9/26/2011 Date	Arthur Heckman Arthur Heckman Plaintiff
9/26/11 Date	Ruth Heckman Ruth Heckman Plaintiff

Sept 13, 2011
Date

Robert Picou, Superintendent
Bering Strait School District
Plaintiff

Date

Karen Ladegard, Superintendent
Iditarod Area School District
Plaintiff

Date

Steven Pine, Superintendent
Kashunamiut School District
Plaintiff

Date

Gary Baldwin, Superintendent
Lower Kuskokwim School District
Plaintiff

Date

John Lamont, Superintendent
Lower Yukon School District
Plaintiff

Date

Howard Diamond, Superintendent
Yupiit Schools
Plaintiff

Date

Charles Wohlforth
CEAAC Executive Director
Plaintiff

Date	Robert Picou, Superintendent Bering Strait School District Plaintiff
September 21, 2011 Date	Karen L. Ladegard Karen Ladegard, Superintendent Iditarod Area School District Plaintiff
Date	Steven Pine, Superintendent Kashunamiut School District Plaintiff
Date	Gary Baldwin, Superintendent Lower Kuskokwim School District Plaintiff
Date	John Lamont, Superintendent Lower Yukon School District Plaintiff
Date	Howard Diamond, Superintendent Yupiit Schools Plaintiff
Date	Charles Wohlforth CEAAC Executive Director Plaintiff

Date	Robert Picou, Superintendent Bering Strait School District Plaintiff
Date	Karen Ladegard, Superintendent Iditarod Area School District Plaintiff
9.14.11 Date	Steven Pine, Superintendent Kashunamiut School District Plaintiff
Date	Gary Baldwin, Superintendent Lower Kuskokwim School District Plaintiff
Date	John Lamont, Superintendent Lower Yukon School District Plaintiff
Date	Howard Diamond, Superintendent Yupiit Schools Plaintiff
Date	Charles Wohlforth CEAAC Executive Director Plaintiff

Date	Robert Picou, Superintendent Bering Strait School District Plaintiff
Date	Karen Ladegard, Superintendent Iditarod Area School District Plaintiff
Date	Steven Pine, Superintendent Kashunamiut School District Plaintiff
9/16/11 Date	Gary Baldwin, Superintendent Lower Kuskokwim School District Plaintiff
Date	John Lamont, Superintendent Lower Yukon School District Plaintiff
Date	Howard Diamond, Superintendent Yupiit Schools Plaintiff
Date	Charles Wohlforth CEAAC Executive Director Plaintiff

Date	Robert Picou, Superintendent Bering Strait School District Plaintiff
Date	Karen Ladegard, Superintendent Iditarod Area School District Plaintiff
Date	Steven Pine, Superintendent Kashunamiut School District Plaintiff
Date	Gary Baldwin, Superintendent Lower Kuskokwim School District Plaintiff
09.23.2011 Date	John Lamont, Superintendent Lower Yukon School District Plaintiff
Date	Howard Diamond, Superintendent Yupiit Schools Plaintiff
Date	Charles Wohlforth CEAAC Executive Director Plaintiff

Date	Robert Picou, Superintendent Bering Strait School District Plaintiff
Date	Karen Ladegard, Superintendent Iditarod Area School District Plaintiff
Date	Steven Pine, Superintendent Kashunamiut School District Plaintiff
Date	Gary Baldwin, Superintendent Lower Kuskokwim School District Plaintiff
Date	John Lamont, Superintendent Lower Yukon School District Plaintiff
09-16-2011 Date	Howard Diamond, Superintendent Yupiit Schools Plaintiff
Date	Charles Wohlforth CEAAC Executive Director Plaintiff

Date	Robert Picou, Superintendent Bering Strait School District Plaintiff
Date	Karen Ladegard, Superintendent Iditarod Area School District Plaintiff
Date	Steven Pine, Superintendent Kashunamiut School District Plaintiff
Date	Gary Baldwin, Superintendent Lower Kuskokwim School District Plaintiff
Date	John Lamont, Superintendent Lower Yukon School District Plaintiff
Date	Howard Diamond, Superintendent Yupiit Schools Plaintiff
September 22, 2011 Date	Charles Wohlforth CEAAC Executive Director Plaintiff

Accepted as to Form:

9/30/11
Date

Howard S. Trickey
Howard S. Trickey
Counsel for Plaintiffs

Accepted by Defendant State of Alaska:

Date

Mike Hanley, Commissioner
Alaska Department of Education and Early Development
Defendant

Accepted as to Form:

Date

John J. Burns
Attorney General for the State of Alaska

Accepted as to Form:

Date	Howard Trickey Counsel for Plaintiffs

Accepted by Defendant State of Alaska:

10/3/2011 Date	Mike Hanley Mike Hanley, Commissioner Alaska Department of Education and Early Development Defendant

Accepted as to Form:

10-4-2011 Date	John J. Burns Attorney General for the State of Alaska