

Excerpt from the Moore Case, Case No.
3AN-04-9756 Civil
Testimony from Superintendent Davis
Bering Strait School District
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

KRISTINE MOORE and GREGORY)
MOORE, for themselves and as the)
parents or guardians of their minor)
children, JASON EASTHAM, SHANNON)
MOORE and MALLORY MOORE;)
MIKE WILLIAMS and MAGGIE WILLIAMS,)
for themselves and as the parents of their)
minor daughter, CHRISTINE WILLIAMS;)
MELVIN OTTON and ROSEMARY)
OTTON, for themselves and on behalf)
of their minor children, HELENA)
OTTON, FREDERICK OTTON and)
BENJAMIN OTTON; WAYNE)
MORGAN and MARTHA MORGAN,)
for themselves and as parents of their)
minor children, WAYNE MORGAN II,)
PATRICK MORGAN, RILEY MORGAN,)
and SKYE MORGAN; JERRY S. DIXON,)
on behalf of himself and as the father of)
KIPP DIXON and PYPER DIXON, minors;)
the YUPIIT SCHOOL DISTRICT;)
the BERING STRAIT SCHOOL DISTRICT;)
the KUSPUK SCHOOL DISTRICT;)
NEA-ALASKA, INC.; and CITIZENS FOR)
THE EDUCATIONAL ADVANCEMENT OF)
ALASKA'S CHILDREN, INC.,)
)
Plaintiffs,)
vs.)
)
STATE OF ALASKA,)
)
Defendant.)
)
) Case No. 3AN-04-9756 Civil

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172] Spike Jorgensen is CEAAC's executive director and testified by deposition in this case.

192. CEAAC's purposes include ensuring "that the state of Alaska complies with its constitutional ... obligation to provide a quality education for the children of Alaska." [Ex. 211 at 21546] CEAAC has a direct interest in this litigation and seeks to obtain additional funding from the State for its members.

III. The School District Plaintiffs

A. Bering Strait School District

193. Bering Strait School District (BSSD) is a REAA located at the west coast of Alaska. The district serves fifteen widespread and diverse Alaskan villages, and has a total enrollment of approximately 1700 students. [Ex. 109; Tr. 213] The area includes villages on the Seward Peninsula and Norton Sound as well as on St. Lawrence and Little Diomed Islands. [Ex. 44 at 18833] The distance between the two furthest schools in the district is approximately 350 miles. [Tr. 213, 147]

194. The superintendent of the district is John Davis, Ph.D., who was the first witness to testify at the trial in this case. At the time of trial, Dr. Davis had been the superintendent of BSSD for seven years. [Tr. 143; Ex. 2008] Dr. Davis was described to this Court as "an outstanding educator" by the Commissioner of Education, Roger Sampson, and this was clearly established by the evidence at trial. [Tr. 2361] Dr. Davis demonstrated deep conviction and dedication toward improving the quality of education for all children in the Bering Strait School

District, and has achieved substantial success in that regard during his tenure as superintendent.

195. The communities within BSSD vary in terms of lifestyle and student performance. Many children in the communities of Gambell, Savoonga and Diomede speak Siberian Yup'ik as their primary language. [Tr. 147-148]

196. The largest school in the BSSD is Savoonga, with 219 students and 21 certified staff members. Savoonga is located on St. Lawrence Island in the Bering Sea. [Tr. 254]

197. Several of these schools have consistently failed to make Adequate Yearly Progress (AYP) on state assessments. [Ex. 2387 at 57678-80; Tr. 160]

198. Unalakleet and White Mountain are two other schools within the district. These schools have made AYP in recent years. [Tr. 160] Dr. Davis testified that although "it shouldn't be," in his experience educational success increases as the number of generations in a family with education increases. [Tr. 299] As school board member Melvin Otton noted in his deposition, Unalakleet had a private school as well as a BIA school before statehood, so "parents that attended there, their view of education was more engrained than in a lot of the other communities." [Otton Depo. at 54]

199. Close to 100% of the students in the district are Alaska Native, and over 80% of the district is limited English proficient.

200. BSSD received \$21,265 per student (ADM) in state and federal operating (non-capital) funds in 2005. [Ex. 2321]

201. During Dr. Davis' tenure as superintendent, the BSSD school board has made many critical improvements in the quality of education within the school district. [Tr. 237-38] From Dr. Davis' perspective, the key to the district's success to date has been that "we've changed our basic philosophy. It's not about what you want to do. In other words, it's not about you; it's about what students need." [Tr. 164-65]

202. In recent years, BSSD has fully implemented throughout the district a reading program entitled "Success for All," which is an intensive, scientifically-based reading program developed at John Hopkins University. BSSD has devoted considerable time and expense toward staff development with respect to this program. [Tr. 239-43] BSSD is also striving to actively engage parents in their child's education by asking parents to sign off on homework and read with their children during the evenings. [Tr. 167] In order to obtain the funds necessary to fully implement and maintain the "Success for All" program, the district made the decision to reduce 'non-core' personnel at the district, such as counselors and vocational educators, and direct its funds toward this reading curriculum. [Tr. 315]

203. BSSD has also implemented the Quality Schools Model. Under this model, the district has eliminated traditional grades and moved to proficiency standards. The model requires that a student demonstrate proficiency on a certain topic, no matter how long that takes to achieve, before moving on to the next subject matter. [Tr. 165-66, 244] A student does not graduate until he or

she demonstrates a specified level of proficiency in all core areas of learning. [Tr. 244-47]

204. BSSD has made staff development a priority in its funding and resource allocation decisions. [See, e.g., Ex. 51, Response to Interr. # 12 which details the extensive professional development activities sponsored by BSSD during school years 1999-2005.]

205. Since the implementation of the "Success for All" reading program, BSSD student reading achievement has increased considerably, and several schools have improved their reading test scores by 100%. [Tr. 243-44]

206. In 2006, 46% of the children in the district were proficient in language arts, and 37% of the children were proficient in math. [Ex. 149] By comparison, in 2003, 34% of the students were proficient in language arts and 33% proficient in math. [Ex. 152]

207. In BSSD, 7 out of 15 schools made AYP in 2006. [Tr. 223] Three of those seven schools made AYP under the safe harbor provisions. [Tr. 223] The district as a whole has failed to make Adequate Yearly Progress, and is at the most extreme level of noncompliance -- Level 4, year 2. [Tr. 2413]

208. The district has had a high dropout rate. Approximately 34% of students at BSSD who began ninth grade graduated from high school in 2006. [Ex. 149] This compares to the statewide graduation rate of 55.58% in 2006. [Ex. 156]

209. Kerry Jarrell, the Chief Financial Officer of the Bering Strait School District, also testified at trial. Mr. Jarrell has worked for the district for 21 years.

210. Revenues that Bering Strait School District received in Fiscal Year 2005 are reflected in Exhibit 2107, which is the financial audit for that year and the most recent audit available at the time of trial. In that year, the district received \$38.57 million in non-capital government funds that were available for operating expenses. Of that amount, the district spent \$37.22 million, leaving a surplus of over \$1.3 million that year that the district retained for use in later years. [Ex. 2107 at 14, columns 1 and 3]

211. During the 2004-05 school year, the district budgeted to spend \$16.74 million on general instruction expenses. However, that budget was later modified and only \$15.76 million was spent -- the unspent remainder of nearly \$1 million was saved for future years. [Ex. 2107 at 16, columns 2 and 3] This surplus is part of the over \$1.3 million surplus identified above.

212. BSSD is one of the few rural districts in Alaska to consistently meet the "70/30" state requirement regarding allocation of funds for instructional expenses. [Tr. 154]

213. Dr. Davis' testimony that he and the school board have redirected the district's funds and resources to the classroom is fully supported by the district's financial documentation. That documentation indicates the following:

- In 1996, BSSD had 184 certified staff; in 2005, the district had 204 certified staff – an increase of 20 certified staff. During that same period, the number of students (ADM) was relatively unchanged – 1,679 in 1996 and 1,699 in 2005. [Ex. 2107 at 35070] Based on

these figures, the 2005 overall pupil-teacher ratio in BSSD was approximately one teacher for every eight students. [Cf. Ex. 2384]

- The amount BSSD has devoted to general instruction increased from \$11.94 million in 1996 to over \$20 million in 2005. Likewise, the amount devoted to special education increased from \$1.48 million to \$2.5 million during this same time frame. And the amount spent on support services (defined as counselors, librarians and professional development) nearly doubled during that time frame from \$595,884 to \$1.14 million. The large majority of the support service funds went toward professional development costs associated with the implementation of the “Success for All” reading program. During that same time frame, the total combined cost of district and school administration was actually *reduced* from approximately \$3.4 million to \$2.5 million per year. [Ex. 2107 at 35067]¹²

214. Part of the reason that BSSD’s surplus in FY 2005 was so high was because the State allocated additional funds to public schools late in the fiscal year. With respect to those additional funds, Mr. Jarrell testified that those funds were not spent because “[w]e didn’t simply hire teachers to reduce the pupil-teacher ratio willy-nilly,” and in part because of the problem of committing to additional staff in the face of uncertain future revenues. [Tr. 606, 612]

¹² None of these figures has been adjusted for inflation.
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215. Mr. Jarrell testified as to extensive cuts that had been made to the BSSD's program over the years. For example, he indicated that the number of counselors in the district had been reduced from 12 to 2. [Tr. 430] But based upon this Court's review of the financial and other district information submitted by BSSD, this Court finds that the reduction in those particular personnel was a consequence of the board's intentional redirection of funds into the classroom rather than a result of budget cuts. For example, BSSD staff's proposal to the school board for staffing in 2006 recommended a minor reduction in the hours of several educational aides in the district from the prior year, but also recommended the hiring of three new full time certified teachers – two in Savoonga and one in Golovin. [Otton Depo. ex. 7 at 26255]

216. In recent years, the State has provided BSSD with several new schools. This year the district is receiving an additional three new schools. [Tr. 150]

217. If more resources were made available to BSSD, Dr. Davis would like to add year-round staff so that the entire summer could be used for teacher training. [Tr. 225] But Dr. Davis acknowledged that his view on such a program is not necessarily shared by the school board. [Tr. 300] Currently, BSSD staff starts about one month in advance of the students each fall. Dr. Davis would also like to develop summer programs for the students, supplemental and remedial services for the students, and the district's own mentorship program. [Tr. 170-71, 199]

218. Dr. Davis noted, “Money will allow us to change things, but ... without direction, without purpose ... I’m not in favor of just spending money for spending money’s sake.” [Tr. 177] Dr. Davis opined that many students in poor rural areas in Alaska score poorly on achievement tests because some districts “haven’t effectively directed those resources that we have.” [Tr. 233] He also testified that “[t]here are districts [that] don’t use resources wisely.” [Tr. 232]

219. Within the last five years, BSSD has incorporated distance learning into its student instruction. The district has received over \$7 million in technology funding in the last five years, and its technological capability is excellent. [Tr. 273-75] Through distance learning, BSSD offers math, science and Spanish. Distance learning has reduced travel expenses and students are now able to participate in activities such as the “Battle of the Books” reading competition via videoconferencing. [Tr. 156, 275-76] BSSD also has a student broadcasting team which broadcasts on the web each week. The students have highlighted the Iditarod sled dog race, interviewing mushers and others. [Tr. 276-78; Ex. 2009] BSSD’s website also depicts student activities including students traveling to Fairbanks to participate in the University’s Geophysical Institute. Additionally, the website features student poetry, shop class projects such as kayak building, and cultural activities involving elders teaching students about Yup’ik traditions. [Tr. 281-284; Ex. 2009]

220. All communities within BSSD are accessed by air. BSSD maintains its own airplane, storage facility, pilot and mechanic. [Tr. 149-52] Although disputed to some degree by the State, this Court finds, based on the

district's available revenue, immense size and remote school sites, that the airplane is not an unreasonable use of district funds.

221. BSSD has several sports teams, including cross-country skiing, basketball, wrestling and cross-country running. These teams travel both throughout the district and to other districts by air. [Tr. 285-86]

222. BSSD has three itinerant teachers that provide vocational education in the district. [Otton Depo. ex. 7 at 26258]

223. BSSD has partnered with the other school districts to form NACTEC, a vocational center in Nome. [Tr. 290-92] This program recently received an additional \$3 million appropriation from the State to build dormitories for rural students. [Tr. 526] Among the course offerings is an intensive two-week motor vehicle driver training class. [Otton Depo. at 136]

224. BSSD has implemented a skills camp, which is a week-long intensive focus for those students who have had trouble passing the State's high school graduation qualifying exam. Since the skills camp has been implemented, Dr. Davis indicates that the student pass rate on that exam has increased substantially. [Tr. 294]

225. Dr. Davis testified that in his view, education in the fine arts is not as critical as education in core subjects such as English, math, and science. [Tr. 188-94] With respect to world languages, BSSD schools are teaching Yup'ik language and culture, and many children are already bilingual in Yup'ik and English. [Tr. 194; Ex. 2081 at 5655, 5659] Dr. Davis considers education in other languages to be a lower priority than some other content areas in the Bering

Strait School District, but would like to be able to offer foreign languages to those students who have an interest in it. [Tr. 195] Such an approach appears consistent with the school district's mission statement: "to educate our children to become self-sufficient and responsible citizens through quality programs that express high expectations for all in a safe, supportive and collaborative learning environment that reflects our children's heritage." [Ex. 2007 at 26349]

226. Dr. Davis testified that small schools in Alaska should not be expected to offer all of the courses available in large schools. [Tr. 303] Instead, his position is that "we should offer an adequate education." [Tr. 302]

227. BSSD board member Melvin Otton testified that a small rural school such as Koyuk has its advantages over an urban school such as Anchorage. Because of the considerably lower pupil/teacher ratio, there is the advantage of more interaction with the teacher. Moreover, in his view, there is the advantage of closeness to nature that rural life provides. [Otton Depo. at 131-32]

228. In BSSD, teacher turnover has been reduced significantly in the last several years and is down to 11% district wide. [Tr. 214] The schools in Savoonga and Wales had zero teacher turnover in 2005-2006. [Tr. 253] Additionally, BSSD is able to promptly replace departing staff and has no vacant positions. [Tr. 255] In Dr. Davis' view, teacher retention has improved because teachers have a sense of professional satisfaction as a result of the positive changes at BSSD. [Tr. 255, 262] Dr. Davis testified that money will not inspire a teacher to remain teaching. [Tr. 255] However, Mr. Jarrell, BSSD's chief financial

officer, did note that in his opinion BSSD has the best compensation package for teachers of any rural entity in the state. [Tr. 528]

229. Dr. Davis defines an adequate education as “an education that gives young people the tools to succeed in whatever life they choose.” [Tr. 304] Dr. Davis testified that his own children and many other students attending BSSD are receiving an adequate education, but that is due in part to the supplemental activities and education that these children, including his own, receive from their families. [Tr. 308] Dr. Davis later qualified his testimony by stating that, overall, education within BSSD was not adequate “[b]ased on the evidence of the assessment” -- that is, based on the district’s results in state testing. [Tr. 323] In his view, by the standards required of the Commissioner of Education, “we are not successful; by standards based on where we were, where we’re going, we are successful.” [Tr. 304] He also testified that he “would like to see an early childhood program,” and that the University needs to turn out teachers better prepared to teach in rural Alaska. [Tr. 324-25]

230. School Board member and Plaintiff Melvin Otton testified by deposition in this case. Mr. Otton indicated he has been on the BSSD board for 18 years, with the goal of “improving education for our children.” [Otton Depo. at 12-13] Mr. Otton attributed the improved testing scores at BSSD to a combination of things. He viewed the implementation of the district’s reading program, “Success for All,” as a critical component. And he added “probably one of the biggest factors is the parents’ involvement,” noting that the “Success for All” program requires the children to read to someone at home 20 minutes a

day. [Id. at 36-37] He also attributes the success of Bering Strait to its focus on core subject areas, its reliance on technology and its use of strategic planning.

[Id. at 20, 47-48]

231. When asked why some schools in the BSSD were not showing as much improvement as others, Mr. Otton indicated that some of the reason might be problems in the community, such as use of drugs and alcohol and excessive bingo-playing. [Id. at 59] And some of the reason might be personnel related – some schools might have stronger principals or staffs. [Id. at 50] Mr. Otton added:

And the other thing that probably plays a part is the community as a whole, how does a community view education. And my view – and this is my personal view - is that some of those communities that have low scores, some of the parents are not involved to an extent to where they are ensuring that their child have enough rest, that they are at school constantly, that the child's behavior is conducive to learning. Those type of things. They play a part.

[Otton Depo. at 50] Mr. Otton testified that he felt his children's education at BSSD is adequate. But he added, "to be on a more equitable basis with other students they probably could have used a little more opportunities." In this regard, he proposed a structured music course. [Otton Depo. at 134-35]

232. Dr. Davis has conferred with Commissioner Sampson regarding those schools within BSSD that are not yet demonstrating success. Dr. Davis has asked the Commissioner for assistance: "If you've got an idea on how we can make it work better in this community or that community, I'm open. Let's not wait any longer, you know, partner with me." [Tr. 2361]

233. Dr. Davis has requested specific funds and assistance from the Department which has not been provided. BSSD was not awarded one of the Reading First grants. BSSD was not able to obtain an instructional audit from the Department, even for its schools that had repeatedly failed to make AYP, although BSSD requested it. [Tr. 2403] Given that in some of the BSSD schools, less than 20% of the children are proficient in some subjects, this decision by the State to refuse to provide this assistance is of concern. [Ex. 2387 at 57678-80] But Dr. Davis also acknowledged the ways in which the State has been particularly helpful, including its assistance after the White Mountain fire, its mentorship programs, its development of content and performance standards, and the overall philosophical change that the State EED has developed – which Dr. Davis characterized as a change in working for the school districts, and not the other way around. [Tr. 327]

234. The Plaintiffs have failed to establish by a preponderance of the evidence that the additional services that BSSD seeks to provide to its students could not be provided to those students using the funds that are currently available to the district. Although the district's audited financial statements for several years were submitted as exhibits to this Court, no budget analysis to demonstrate the lack of available funds for the additional services sought was presented. As Mr. Jarrell acknowledged, Alaska law accords to school districts the discretion as to how to spend the revenues it receives. [Tr. 503] Indeed, the testimony indicated that BSSD had substantial unspent funds at the end of the

2005 fiscal year, which presumably could be devoted toward such resources should the district elect to do so.

235. Based on the evidence presented at trial, this court finds that the children in the Bering Strait School District are being accorded a meaningful opportunity to achieve proficiency in reading, writing, math and science, and are also accorded the opportunity for meaningful exposure to the State's other content standards. This is due both to the adequacy of the resources that have been provided to the district and the effective use of those resources that has been made to educate the children that reside there.

B. Kuspuk School District

236. The Kuspuk School District is a REAA with ten schools in eight villages serving approximately 414 students. [Ex. 2011 at 58416-22, Ex. 2321] The district is located along the Kuskokwim River in western Alaska, from Stony River to Kalskag. The majority of the population is Yup'ik or Athabascan. [Tr. 1934] The majority of students have limited English proficiency (90%) and are low income (80%). [Tr. 1934]

237. The current superintendent of the school district is Dr. Martin Laster, who testified as a witness at the trial in this case. He was named Superintendent of the Year in Alaska when previously employed at Craig. At the time of trial, Dr. Laster had been at Kuspuk for just one year. [Tr. 1929-30]

238. The evidence at trial demonstrated that student achievement has increased significantly during Dr. Laster's brief tenure as superintendent at Kuspuk.