

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

KRISTINE MOORE, et al.,)
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vs.)
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STATE OF ALASKA,)
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Defendant.)
_____) Case No. 3AN-04-9756 CI

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This case involves the Education Clause of Alaska's Constitution, which provides, in relevant part, "[t]he legislature shall by general law establish and maintain a system of public schools open to all children of the State."¹ Following a trial held in late 2006, this Court issued a Decision and Order in June 2007 which set out four requirements for compliance with the Education Clause. There, this Court found that the Legislature, in conjunction with the State Department of Education and Early Development, was in compliance with three of the four requirements: (1) the State had adopted a constitutionally adequate set of educational standards for what children should be expected to learn; (2) the State had developed adequate assessments for determining whether children were actually learning the material included in the standards; and (3) the State had provided adequate funding so as to accord to schools the ability to provide instruction in the standards.²

On the fourth prong, however, adequacy of State oversight and accountability, this Court found that the State was deficient. While this Court recognized that the State

¹ Alaska Constitution, Article VII, Section 1.

² Decision and Order at 174-184, ¶¶ 5-30 (June 21, 2007).

could delegate its constitutional responsibilities under the Education Clause to local school districts, the State must exercise “adequate accountability and oversight ... so as to insure that the districts are fulfilling the State’s constitutional responsibility to ‘establish and maintain a system of public schools.’”³ The June 2007 Order specifically identified one chronically underperforming school district in which the State’s oversight efforts were constitutionally inadequate, and recognized that the State’s efforts might be constitutionally deficient in other underperforming districts as well.⁴ The Order then outlined two types of remedial measures the State would be required to take to establish compliance with its constitutional duty:

In order to achieve compliance with the Education Clause’s requirement to maintain a system of public schools, the State must do, at a minimum, two things. First, it must establish clear standards for school districts that are necessary for the district to retain full local control. These standards must focus on whether the school district is fulfilling the State’s constitutional obligation to provide an education to the children within the district. In short – the State must insure that each school district has a demonstrated plan to provide children a meaningful opportunity to achieve proficiency in the State’s performance standards, and meaningful exposure on the remaining content standards – and insure that the district’s plan is fully implemented and actually in use in the district’s classrooms. Second, the State must exercise considerably more oversight and provide considerably more assistance and direction to those schools that are identified as failing to meet the State’s constitutional obligation, in a concerted effort to remedy the situation.⁵

This Court’s June 2007 decision also held that students have a substantive due process right that precluded the State from relying on the High School Graduation Qualifying Exam (HSGQE) to deny a student a high school diploma in those chronically

³ *Id.* at 174.

⁴ *Id.* at 186-189.

⁵ *Id.* at 189.

underachieving school districts in which the State had not yet undertaken constitutionally adequate oversight and remedial efforts.⁶

This Court stayed enforcement of the June 2007 Order for one year so as to accord to the State the opportunity to establish compliance with its constitutional obligations. In so doing, this Court held that “it is the State, at this juncture, that should have the first opportunity to address how best to achieve these two requirements.”⁷

Pursuant to the stipulation of all parties, by order dated October 6, 2008, all of the individual plaintiffs and NEA-Alaska, Inc. were dismissed with prejudice from the case. The remaining plaintiffs are the Yupiit School District, Bering Strait School District, Kuspuk School District, and the Citizens for the Educational Advancement of Alaska’s Children, Inc. (CEACC).

In June and October 2008, an evidentiary hearing was held to assess the adequacy of the State’s compliance efforts. The State presented the testimony of Les Morse, John Holst, Gary Whiteley, Roger Sampson, Eddy Jeans, Barbara Thompson, Larry LeDoux, and Dr. James Guthrie. Plaintiffs presented the testimony of Dr. John Davis, Dr. Linda-Darling Hammond, Dr. Norm Eck, and Diane George. Three additional witnesses testified by deposition and approximately 160 exhibits were admitted. Counsel for both parties submitted extensive proposed Findings of Fact and Conclusions of Law.

Having considered all of the evidence, together with the arguments of counsel, this Court now makes the following:

⁶ *Id.* at 193.

⁷ *Id.* at 190.

FINDINGS OF FACT

I. Findings Regarding the State's Process for Determining which Districts and Schools Require Intervention

1. As noted above, the June 2007 Order directed the State to “establish clear standards ... that are necessary for the district to retain full local control.”⁸

2. The State determines which school districts require additional State oversight through a two-step process: first, a “desk audit,” and second, an on-site “instructional audit.”

3. The desk audit is an in-depth examination of a district's accountability data and assessment data to determine if student achievement is improving within that district even though the district has not demonstrated “adequate yearly progress” (AYP) as defined in 4 AAC 06.805.⁹ [Tr. 6/09/08 at 115-43; Exs. 2509, 2510] The Department's practice has been to conduct a desk audit of each district that is at Level 4 or higher, meaning that the district has not made AYP for four or more years. [Tr. 6/09/08 at 139]¹⁰

4. The State has adopted performance standards in four subjects: reading, writing, math and science. In addition, the State has developed content standards in the following areas: geography, government and citizenship, history, skills for a healthy life, arts, world languages, technology, employability, and library/information literacy.¹¹

⁸ Decision and Order at 189.

⁹ 4 AAC 06.840(j)(1). The district desk audit process was noted in this court's June 21, 2007 decision. [Decision and Order at 46]

¹⁰ 4 AAC 06.840(j) provides that desk audits may be conducted at any district that has been designated as Level 2 or higher.

¹¹ See *generally* Decision and Order at 13-17.

5. The desk audit does not evaluate whether a district is providing its students with any exposure to the content standards that are not included in the State's standardized testing. Stated differently, only the performance standards are evaluated in the desk audit. [See, e.g., tr. 6/10/08 at 132] The State did not present any evidence that it is undertaking any effort to insure that school districts are providing public school children with any instruction in the other content areas which the State identified as early as 2000 -- nine years ago -- as "what the students in our state should know and be able to do as a result of their public school experience."¹²

6. Based on the results of the desk audit, the Department determines for each district whether an instructional audit is warranted. [Tr. 6/9/08 at 130-134]

7. The instructional audit is defined by regulation as:

[A]n on-site review of the instructional policies, practices, and methodologies of the district or one or more schools within the district; an instructional audit may include a review of the district's or school's

(A) curriculum, including whether the curriculum is aligned with the state's standards and grade level expectations adopted in 4 AAC 04.140 and 4 AAC 04.150;

(B) assessment policy and practice;

(C) instruction;

(D) school learning environment;

(E) professional development policy and practices; and

(F) leadership.¹³

8. For an instructional audit, the Department sends a team of Alaskan educators (typically three people) to a district to visit two or three school sites that have been selected by the Department. [Tr. 6/9/08 at 155] At each school site, the team interviews

¹² Trial Ex. 388, Alaska Standards, February 2000, Department of Education and Early Development.

¹³ 4 AAC 06.840(j)(2).

administrators, teachers, and students. Each team uses the same audit tool that was developed with the assistance of the Alaska Comprehensive Center.¹⁴ The tool evaluates the site's compliance with each of the six domains listed in the above-quoted regulation, and also evaluates subparts for each domain.

9. The audit includes an assessment of student attendance. The audit does not evaluate the interface between the school and the local community. Local school board members and community members are not interviewed or involved in the audit.

10. The instructional audit evaluates whether the school's curriculum is aligned with the State's performance standards and whether that curriculum is actually in use in the district's classrooms. But, like the desk audit, the instructional audit does not include any analysis as to whether the school district has a demonstrated plan to provide its students with meaningful exposure to any of the content standards that are not included in the State's standardized testing.

11. The audit team makes findings about whether a school meets or does not meet each domain and its subparts. A summary sheet of the team's findings is provided to the district, but the summary does not contain any explanation for the auditors' determinations. The auditors also prepare a narrative explanation for their determinations for each subsection of each domain. [Exs. 2554-60] However, the Department has not provided these narratives to district leadership. Department personnel indicated the narratives have not been provided to the district personnel in an

¹⁴ The Alaska Comprehensive Center is a federally-funded center whose role is to assist the Department in building its capacity to, in turn, build the capacity of the school districts. [Tr. 6/9/08 at 146-47] All states have access to a comprehensive center, but some states are served together by regional comprehensive centers. [*Id.*]

effort to protect the confidentiality of the respondents and to encourage respondents to be candid in their answers to the auditors.¹⁵ The audit narratives were generally objective and professional, and they contained information that would be useful to a district that was trying to improve. The Department has indicated that its long-term goal is to train auditors to exclude all personally identifiable information so that the entire audit report can be provided to the district. [Tr. 10/7/08 at 90]

12. The Department is in the process of validating the instructional audit to assess whether it provides an accurate assessment of the quality of instruction within a school. [Tr. 6/9/08 at 148-151]

13. The Department has provided training to school district personnel at which it has explained the desk audit and instructional audit processes. [Ex. 2509]

14. During the 2006-2007 school year, the Department conducted instructional audits at five school districts: Lower Yukon, Northwest Arctic, Yukon Flats, Yukon Koyukok and Yupiit. [Exs. 2554 -2558] Prior to those audits, the Department had already begun to intervene at the Yupiit School District. [Tr. 6/11/08 at 79; tr. 10/6/08 at 143-44] After those audits were completed, the Department intervened in the other four districts. [Ex. 2508, tr. 6/9/08 at 161-162]

15. During the 2007-08 school year, the Department conducted desk audits of 11 additional districts. [Ex. 2508; Tr. 6/9/08 at 121] As a result of those desk audits, the Department conducted an instructional audit of the Southwest Region School District in January 2008. [Tr. 10/8/08 at 89] In 2007-2008, the Department also reviewed the

¹⁵ See, e.g., tr. 10/10/08 at 68, 125. For Southwest Region School District, a summary of the instructional audit narrative was provided to the district. [Tr. 10/7/08 at 89]

data of the five districts in which it had previously intervened and determined that it would continue to intervene in each of those districts. [Tr. 6/9/08 at 121]¹⁶

16. Although the Department initially planned to intervene in the Southwest Region School District after the instructional audit was completed, the Department elected not to do so after repeated consultations with that district's superintendent and based on the growth in student achievement demonstrated by the spring 2008 assessment data. [Tr. 10/8/08 at 89] A review of that district's data indicated that from 2007 to 2008, the number of students who tested as proficient increased from 43% to 47% in reading, from 31% to 35% in writing, and from 34% to 40% in mathematics. [Ex. 2489]

17. During the 2008-09 school year, the Department plans to conduct instructional audits in three school districts: Bering Strait, Lower Kuskokwim, and North Slope Borough. [Tr. 10/8/08 at 53; Ex. 2592]

18. No evidence has been presented to this Court that the State is intervening in districts in which it should not be intervening, or that the State should be intervening in other districts where it is not.

19. Beginning in the 2008-09 school year, the Department indicated that it plans to conduct school-level desk audits pursuant to 4 AAC 06.872.

20. The first step in the school-level audit is a data-driven test to identify schools that warrant additional analysis. The regulation defines such a school as one that:

- (1) did not make adequate yearly progress under 4 AAC 06.805;

¹⁶ In the 2008-09 school year, the Department has indicated that it plans to use the desk audit process to ensure that each audited district has a district improvement plan that matches the deficiencies in the district, as revealed by the data. [Tr. 6/9/08 at 137-138] Thus, even if the Department does not conduct an instructional audit, it plans to follow up on the desk audit.

(2) has fewer than 50 percent of its full-academic-year students score as proficient or higher on the mathematics, reading, or writing standards-based assessments; and

(3) has a school index point value under 4 AAC 33.540 of 85 or lower.¹⁷

If a school is identified as needing additional analysis, the regulation requires the Department to determine whether the school should be placed in a “program for improvement of instructional practices” – i.e. a school level intervention.¹⁸

20. As of the date of the October 2008 hearings, the State had not intervened in any school pursuant to this regulation. [Tr. 10/7/08 at 123] However, the Department had identified those schools that fell within the three criteria of the regulation, and was beginning to conduct follow up evaluations with those schools. [Ex. 2592]

II. SB 285 and Its Implementing Regulations

22. In the 2008 session, the Alaska State Legislature adopted SB 285.¹⁹ The letter of intent adopted with this legislation stated as follows:

It is the intent of the Legislature that the Department of Education and Early Development (DEED) provide state oversight of public education, and that state oversight promote local control of public education where local control has resulted in effective instructional practices.

¹⁷ 4 AAC 06.872(a). The “school index point value” – item (3) on this list – is a calculation that evaluates the year-over-year growth of individual students’ scores, and then weights the growth or lack of growth based on the proficiency level of the student and the change in proficiency level. See 4 AAC 33.540(5).

¹⁸ The regulation requires that the Department consult with the superintendent of the district in which the school is located, and lists five factors that the Department must consider before pursuing school-level intervention, including whether the school is in an intervention district or the district already has a comparable program of intervention in the school. 4 AAC 06.872(b). See *also* Ex. 2592.

¹⁹ Ch 70 SLA 08.

It is the intent of the Legislature that the DEED intervene in a school district when the department has evidence that intervention by the department can result in improvement in instructional practices in the school district, consistent with the accountability system established in AS 14.03.123, the secondary student competency examination in AS 14.03.075, and the decision of the Alaska Superior Court in *Moore v. State*, No. 3AN-04-9756 CI (Alaska Super. 2007).²⁰

23. SB 285 makes clear that in school districts in which the State has intervened, the Department has the authority to direct a district's supervisory personnel, such as the principals or the superintendent, and direct a district's use of state appropriations.²¹ However, the statute also provides that Department's authority in both these areas ceases when a district made two percent gains in student proficiency in reading, writing and math for three consecutive years.²²

24. The legislation requires that the Department notify the legislative committees with jurisdiction over education before it intervenes in a school district or redirects state appropriations.²³

25. In May 2008, the State School Board adopted regulations pursuant to SB 285. A draft version of the enabling regulations was provided to the Legislature when it was considering SB 285.

²⁰ 2008 Senate Journal, Alaska State Legislature, 2261-62.

²¹ AS 14.07.030(14) and (15).

²² AS 14.07.020(a)(16)(B). The enabling regulations make clear that other aspects of an intervention could continue after three consecutive years of two percent gains. 4 AAC 06.850(d); 4 AAC 06.872(g).

²³ AS 14.07.020(a)(17).

26. No evidence was presented that the State has redirected any district supervisory personnel or any school district appropriations, except that in the 2007-2008 school year, the State required the school districts in which it had intervened to pay for the cost of the district coaches.

III. HSGQE Remediation Plans

27. This Court's June 2007 decision held that because the State had failed to meet its constitutional oversight responsibilities, the State was violating the substantive due process rights of students by deny high school diplomas to students in chronically underperforming school districts who had failed the High School Graduation Qualifying Exam (HSGQE).²⁴

28. Following this Court's 2007 decision, the State Board adopted a regulation that requires all school districts to have a HSGQE remediation plan in place for all high school juniors and seniors who had not passed one or more section of the HSGQE.²⁵ For intervention districts, the regulation provides that the remediation plans must be reviewed and approved by the Commissioner and must "begin no later than the start of the second semester of the students' 11th grade year."²⁶ Remediation is defined as "additional instruction and study that targets the skills tested on the HSGQE."²⁷

²⁴ Decision and Order at 191-194.

²⁵ 4 AAC 06.759.

²⁶ 4 AAC 06.759(b)(1)(B).

²⁷ 4 AAC .06.759(f).

29. In December 2007, each of the intervention districts submitted remediation plans to the Department. [Exs. 2548-2552]

30. Of the five intervention districts, the Department has approved one remediation plan -- the plan submitted by the Yupiit School District. [Ex. 2548]

31. The interim Commissioner wrote to each of the four other intervention districts in December 2007 that the district's plan needed further information before Departmental approval would be forthcoming. [Exs. 2549-52] However, there is no indication in the record before this Court that the Department has done any additional follow up on the remediation plans since that time. [Tr. 10/7/08 at 88; *see also* ex. 436]

32. This Court has reviewed each of the remediation plans from the intervention districts. [Exs. 2548-2552] The plans do not appear to require that each student who has failed the exam who is in 11th or 12th grade has an individualized plan that focuses on the student's area(s) of deficiency in an effort to maximize that student's likelihood of passage of the exam. And the plans do not insure that each such student has an assigned professional to monitor that student's progress toward proficiency on the exam. Nor is there any evidence that the Department has taken steps to confirm that the districts actually have the plans in operation for each of these students.

33. The Department presented a detailed analysis of HSGQE results at the evidentiary hearing in June 2008. [Exs. 2514-2522] The analysis focused on how many students in the classes of 2006 and 2007 had passed all three sections of the exam by their senior year. [Tr. 6/10/08 at 39-41] The analysis showed that a substantial majority of students who stay in school are passing the exit exam, including

students in the intervention districts. However, the Department's analysis excluded all those students who had dropped out or transferred to another school before passing all three sections. Superintendents from intervention and plaintiff districts testified that those students who remain in school have the opportunity to learn the material tested on the HSGQE. [See, e.g., tr. 10/21/08 at 147-148] Yet a review of the Department's statistics demonstrates that numerous students throughout the state are unable to pass the exam even after five opportunities. According to the Department's statistics, and excluding all students who have dropped out before they passed the exam, in 2007 over 1,100 students statewide failed to pass the HSGQE exam after five opportunities, while 8,524 students passed. [Ex. 2514 at 8]

IV. Findings Regarding the Components of the District Level Interventions

A. The Northwest Lab Evaluation

34. An evaluation of the State's improvement process prepared by Timothy Speth of the Northwest Regional Educational Laboratory, in partnership with the Alaska Comprehensive Center, was admitted as an exhibit at the October 2008 evidentiary hearing. [Ex. 477]²⁸ The Lab is a federally-funded research institution with a reputation for performing quality research. Both former Commissioner Sampson and Dr. John Davis were on the Lab's Board for many years, and Commissioner LeDoux is currently on the Lab's Board. [Tr. 10/6/08 at 114; 10/8/08 at 71, 129] Dr. Darling-Hammond

²⁸ Although the report is entitled an evaluation of the "District Improvement Coaches Project," it also addressed other aspects of the district improvement process. [Ex. 477]

testified that “the labs in general, and this lab in particular, has a strong reputation for doing professional work.” [Tr. 10/9/08 at 88]

35. The Northwest Lab Evaluation Report was admitted as an exhibit without objection as a public record under Evidence Rule 803(8). However, the State has identified several shortcomings with the Report, and asserts this Court should not accord any weight to its conclusions. The State notes that the evaluation was based on hearsay -- interviews and surveys of school district personnel, district coaches, and Department staff. [Ex. 477 at 3-4] The State also notes that the author did not analyze achievement data or observe instructional practices in the classroom. And the evaluation’s survey questions did not address whether the respondents had a bias for or against the Department.

36. This Court finds that the limitations in the Report identified by the State should go to the weight to be accorded to the Report and do not warrant the rejection of the Report in its entirety. [Cf. Evidence Rule 703]

B. The Intervention Process

37. The Department’s regulations specify that it is to “draft a district improvement plan” after consultation with each district in which it has conducted an instructional audit, unless the instructional audit results indicate that “the district has adequate instruction policies, practices, and methodologies.”²⁹ The regulation is silent as to what would be adequate in this circumstance, but as noted above, the Department elected not to intervene in Southwest Region.

²⁹ 4 AAC 06.850(c).

38. Although the instructional audit identified particular strengths and weaknesses in each school that was audited, the Department's interventions have not been tailored to respond to those strengths or weaknesses. [Tr. 10/7/08 at 140-141] Rather, the interventions have been essentially identical in each school district in which the Department has intervened. And the Department's interventions have all been district-wide, applying even to the higher-performing schools within each district. [Tr. 6/11/08 at 70; 10/10/08 at 72] Also, despite the regulation's specification that each district's improvement plan was to be developed by the Department "after consultation with the district,"³⁰ the Department did not seek any input from the districts in drafting the initial improvement plans. [See e.g., tr. 10/10/08 at 69-70] Carol Doyle of the Yukon-Koyukok School District testified "I really, really do not agree with the types of things that they're imposing on us ... I have all this year asked for in-classroom, down-to-earth practical strategies for teachers to use with kids to improve their instruction, and I have not gotten that at any point in time." [Doyle Depo. at 27]

39. In each district in which the Department has intervened, the intervention has consisted of the following same components:

- a. Use of two formative assessments – AIMSWeb and ACFA;
- b. Use of a "Response to Instruction" framework;
- c. Weekly school-level collaborative meetings with meeting logs submitted to the Department;
- d. Leadership training for principals and other district leadership; and
- e. Assignment of a district "coach." ³¹

³⁰ *Id.*

³¹ See 4 AAC 06.850(c)(1); tr. 6/9/08 at 169-177.

40. The existing intervention regulations do not include a requirement that the district's curriculum be aligned to the state's standards.

41. Former Interim Commissioner Barbara Thompson acknowledged that "in terms of crafting the content of the plan, the Department didn't look to see whether, within a particular school or a particular district, there was some specific targeted resource that that school or district needed." [Tr. 10/7/08 at 141] And yet Les Morse from the Department testified that the school districts should be looking at all of the results of the audit as part of their improvement efforts. [Tr. 6/10/09 at 132-133]

42. The Northwest Regional Education Laboratory evaluation found that "coaches and superintendents were concerned that the improvement plans were virtually the same for all districts despite differing needs between districts." [Ex. 477 at 15]

43. The Department intends to require a similar uniform improvement plan for any district in which it intervenes, consistent with its intervention regulations.³²

The following Findings address each component of the improvement plans:

AIMSWeb and ACFA

44. All schools in each of the intervention districts have been required to use two computerized assessments -- AIMSWeb and ACFA -- to monitor student progress throughout the year.³³ These assessments are both "formative assessments," defined

³² See 4 AAC 06.850(e); 4 AAC 06.8729(c).

³³ The Department has not precluded the use of other assessments in the intervention districts, including the Anchorage item bank, assessments embedded within the district curriculum, and teacher-formulated assessments. [Tr. 6/9/08 at 169]

by regulation as “assessments that provide feedback for adjustment of ongoing teaching and learning in order to improve achievement of intended instructional outcomes.”³⁴

45. The required use of computerized assessments such as AIMSWeb in the intervention districts is aimed at helping teachers to understand the process of data-driven instruction. [Tr. 10/6/08 at 154-55] According to former Commissioner Sampson, one of the primary criteria for selecting these two particular formative assessments was that the Department can electronically monitor the districts’ use of these assessments from the Department’s offices in Juneau. [Id. at 160]

46. AIMSWeb is a one-minute probe of reading fluency and math computation skills.

47. Plaintiffs’ expert Linda Darling-Hammond³⁵ testified that AIMSWeb assessments are of limited value because they do not “give teachers information they would need to figure out where the student’s reading strategies break down, where they have strengths, and then how would you design an intervention.” [Tr. 10/9/08 at 24]

48. Dr. Darling-Hammond also explained that a fluency probe, such as AIMSWeb, is “not a particularly good indicator for non-native English speakers of their process of learning to read, because it just focuses on pronunciation,” and not on comprehension.

[Tr. 10/9/08 at 24-25]

³⁴ 4 AAC 06.872(c)(2).

³⁵ Dr. Darling-Hammond was qualified as an expert in areas of teacher training, certification and professional development; recruitment and retention of quality teachers; effective assessment and instructional practices; factors and programs known to improve academic achievement of low performing and disadvantaged students; effective school reform; and design and interpretation of education research. [Tr. 10/9/08 at 5]

49. The Northwest Lab evaluation reported that “while AIMSWeb can help identify students who need additional help, it was reported that staff need training in the next step, which is to develop and implement strategies aimed at helping these lower performing students.” [Ex. 477 at 7]

50. At the end of the 2007-2008 school year, the intervention districts which had seen a steady increase in their students’ AIMSWeb scores during the course of the school year did not see a corresponding increase in SBA scores. [Tr. 10/10/08 at 124-125] Dr. Whiteley indicated this could occur if the curriculum was not aligned with the State’s Grade Level Expectations (GLE’s) or the curriculum was not being taught to students before spring testing. [Tr. 10/6/08 at 110-11]

51. The other formative assessment that the Department has required in the intervention districts is the Alaska Computerized Formative Assessments (ACFA). ACFA is a series of computerized questions similar to the questions tested on the State’s Standards-Based Assessments, and directly tied to the State’s GLE’s. [Tr. 6/9/08 at 168]

52. There were substantial problems in the implementation of ACFA. For example, the Northwest Arctic Borough School District (NWABSD) district coach, John Holst, testified that “the implementation, the training was very weak.” [Tr. 6/11/08 at 37] The Northwest Lab evaluation echoes this testimony, reporting that, “[o]f all the trainings, respondents thought this one was the least useful.” [Ex. 477 at 7]

53. Dr. Norman Eck, superintendent of the NWABSD, testified that the State-contracted ACFA trainer who came to the district could not get the program to work, and

so she left without training anybody. [Tr. 10/10/08 at 88] Dr. Eck testified that it took a year and a half before the program was actually usable in that district. [*Id.* at 80]

54. Diane George of the Yupiit School District testified that consistent use of ACFA was hampered by technology infrastructure problems. And when the technology was working, the interface was not user-friendly for young children. [Tr. 10/21/08 at 36-37] Yupiit has recently requested that it be allowed to stop being required to use ACFA, and the Department has permitted it to do so. [*Id.* at 133]

55. The use of formative assessments is a strategy that is consistent with current best practices in education. However, formative assessments should be employed in conjunction with an aligned curriculum and effective teaching strategies so that the teachers are able to effectively use the information from the assessments to improve instruction to those students in need.

Response to Instruction

56. Intervention districts are also required to implement "Response to Instruction" (RTI), a framework that was originally developed as a pre-referral process for teachers to identify students who could be assisted by strategies other than a referral for special education services. [Tr. 10/6/08 at 103]

57. Under the RTI framework, teachers categorize students in one of three groups: "core" students, for whom the core curriculum provides sufficient instructional support, students who need "strategic" assistance, and "intensive" students who require the most significant interventions. [Tr. 10/10/08 at 98] The typical RTI model is like a pyramid, as it assumes that 70 to 80% of students will be "core" students (needing no

interventions outside the core curriculum), 15% to 20% will be “strategic” students, and 5% will be “intensive” ... “where they’ve got some real basic problem.” [*Id.*]

58. Dr. Eck, NWABSD’s superintendent, testified that in some schools in that district, the typical RTI pyramid is inverted. Rather than having the majority of students in the “core curriculum” portion of the pyramid, and only a small percentage in the intensive group, NWABSD currently has schools in which intensive students make up all or almost all of the student population. [*Id.* at 99]

59. Similarly, in the Yupiit School District, Diane George testified that the majority of students are “strategic” or “intensive.” [Tr. 6/11/08 at 121]

60. The inverted pyramid of students that exists in the underperforming districts has the effect of overwhelming teachers who cannot identify appropriate research-based teaching strategies to meet the needs of the large numbers of strategic and intensive students. [*Id.*]

61. Dr. Eck opined that the NWABSD “shouldn’t have moved into RTI so quickly in the first place. We should have been working with building professional learning communities. We should have been working on more of our training in our curriculum first. We have to have that first before you can move into RTI.” [Tr. 10/10/08 at 110]

62. Dr. Eck concluded that effective implementation of RTI requires “intensive professional development to implement research-based instructional strategies” to address the needs of students identified as “intensive” or “strategic.” [Tr. 10/10/08 at 183-184] However, the Department’s intervention has not provided professional development or technical assistance to address this need. [*Id.* at 182] John Holst

agreed that the RTI framework tells teachers what questions to ask, but does not provide a particular instructional or methodology to implement. [Tr. 6/11/08 at 119]

63. In an effort to more effectively implement RTI, NWABSD sent several of its instructional team leaders to a RTI seminar in California, and also assigned two of its master teachers to be RTI specialists. [Tr. 10/10/08 at 94-95] But Dr. Eck testified that still, “we don’t have the bases in place” to successfully use RTI. [/d. at 96]

64. Diane George from Yupiit testified that RTI cannot be implemented without a trained staff, an integrated system of formative assessments, research-based alternatives to the core curriculum, and people trained and available to carry out the needed interventions. In her view, it is unrealistic to expect a classroom teacher to teach the core curriculum, do the additional formative assessments and also provide the variety of interventions needed -- particularly where, as in Yupiit, the majority of students are identified as strategic or intensive. [Tr. 10/21/08 at 120]

65. Carol Doyle, Director of Instruction for the Yukon-Koyukok School District, also testified about the need for access to research-based reading mastery programs and materials, particularly for strategic and intensive students. [Doyle Depo. at 677]

66. The Northwest Lab evaluation concluded that the State’s training on RTI was

insufficient:

Given the complexity of implementing RTI, respondents reported that there was not enough training (only two days) to fully implement it. Furthermore, it was reported by many respondents that the training was too philosophical and that teachers need specific strategies at each stage of the RTI process to help their students. [Ex. 477 at 7]

67. Dr. Darling-Hammond testified RTI “doesn’t teach itself” ... “It can help you get information about student performance. But then you need to have a lot of knowledge about what to do to help students move forward.” [Tr. 10/9/08 at 31] She added:

The usefulness of RTI depends on whether teachers are also being given the instructional support to know what kind of instructional interventions might be helpful to individual students, and to learn how to manage a classroom where they are individualizing their instruction and do not have all the students doing the same thing at the same time and in the same way. That requires a considerable set of skills. [Ex. 456 at 20]

68. The use of RTI is consistent with current best practices in education. However, RTI as implemented by the Department in the intervention districts does not identify appropriate instructional strategies for teachers to use for students identified as strategic or intensive.

Collaborative Meetings

69. An additional requirement of the intervention plans is that each school in the intervention districts must hold weekly one-hour “collaborative meetings” to discuss data on student performance.

70. The Department requires that logs of the collaborative meetings be kept by the teachers and principals, and provided to the central staff of the school district and the district improvement coach. [Tr. 6/9/08 at 26-27]

71. The Department provided training to principals on the protocols for holding the meetings as part of its leadership training. [Tr. 10/6/08 at 40] The purpose of the meetings is for teachers to collaborate and problem-solve on resources and strategies to use to improve achievement. However, the Department’s training did not include

training or support on specific resources and strategies that could be used. [Tr. 10/6/08 at 90]

72. Dr. Whiteley, who designed and conducted the training for the collaborative meetings, acknowledged that the inclusion of collaborative meetings as an intervention component requires an assumption that the teaching staff in the intervention district schools has a sufficient knowledge base so as to effectively devise teaching strategies on their own. [Tr. 10/6/08 at 112]

73. Dr. Darling-Hammond testified that while "it's a good idea to have collaborative meetings ... just having teachers sit down and talk to one another doesn't necessarily mean that you're going to have everything you need at the table to move forward." Teachers "need to have access to expertise. Those teachers do need to be able to call upon coaches, professional learning opportunities, and so on, to help them move forward." [Tr. 10/9/08 at 60]

74. In his expert report, Dr. Davis critiqued the collaborative meeting and RTI components of the interventions as inadequate because the interventions fail to also provide support and assistance on effective instructional methods. He stated that it is unreasonable to assume that simply requiring teachers to meet, review assessment results, discuss and complete logs will "change instructional practices and ultimately student achievement." He elaborates that, "[i]t is not enough to make people aware of how poorly they are doing no matter how precise. Once people know what is wrong, they must understand what must be done to improve." [Ex. 454 at 9]

75. Collaborative meetings have been required regardless of a school's size, including schools with just one or two teachers. [Tr. 6/10/08 at 27; tr. 10/6/08 at 42]

76. Dr. Eck testified that collaborative meetings "are essential" to identifying instructional strategies to improve achievement. [Tr. 10/10/08 at 113-114] But in his view, the Department had not provided sufficient professional development or technical assistance to make the meetings productive. [/d.]

77. Diane George testified that while teachers in the Yupiit School District are using the meetings to discuss student data, they have struggled with finding strategies to assist low performing students. [Tr. 10/21/08 at 54-55] The district has contracted with Gary Whiteley to provide additional training. [/d.]

78. The Northwest Lab evaluation found that the State did not provide sufficient training to effectively implement the collaborative meeting framework. "Given how varied the collaboration meetings were between and among schools in the districts, there is a need for additional training in how to facilitate and implement such meetings." [Ex. 477 at 8]

79. Collaborative meetings of teachers are an appropriate requirement of an intervention and consistent with current best practices in education. [See, e.g., tr. 10/20/08 at 70-71; tr. 10/9/08 at 109-10] However, the meetings could be considerably more effective in improving the delivery of instruction to students in the intervention districts through additional support and training. [See, e.g., ex. 2472]

Leadership Training

80. Another element of the intervention plans is leadership training provided to principals, other members of each district's leadership staff, and district coaches. [Tr. 10/6/08 at 18-19] Former Commissioner Sampson testified this element was included because "we felt like if you could get principals who were skilled at being instructional leaders and focusing the discussions effectively around student achievement, that we could impact a huge percentage of teachers in those schools." [*Id.* at 158]

81. Many witnesses testified about the importance of the role of the principal in school improvement. For example, Dr. Whiteley stated, "the power of any kind of school change lies with the principal." [Tr. 10/6/08 at 26] Similarly, Dr. Guthrie testified that "you will never get an effective school unless you've got an effective principal." [Tr. 10/20/08 at 69]

82. Dr. Whiteley provided the leadership training to the intervention districts in the fall of 2007. The training took place over four days, with one day spent on each of the following four topics: leadership and change, curriculum, instruction and assessment. [Tr. 10/6/08 at 14] He described the trainings as "general in nature" and not directed to any particular instructional strategy or other component of the intervention plans. [*Id.* at 90] Dr. Whiteley provided the training attendees with various resource materials which he had compiled, and explained that these materials were intended to allow the districts to "pick and choose" what they thought might be useful. [Tr. 10/6/08 at 30-32, 90; see also Exhibits Summary filed 12/9/08]

83. The curriculum component of the training focused on teaching principals how to conduct GLE walkthroughs, a process in which the principal briefly observes teachers and monitors “grade level expectations to see if they’re covered within the context of the curriculum that’s being instructed.” [Tr. 10/6/08 at 37]

84. Dr. Whiteley testified that GLE walkthroughs are not a substitute for developing an aligned curriculum. Rather, he characterized GLE walkthroughs as an “initial intervention.” [Tr. 10/6/08 at 92-93]

85. Leadership training for principals is consistent with current best practices in education. Dr. Darling-Hammond testified that the leadership training was “well intentioned,” but just “scratches the surface,” and “has not been intensive enough to really help people learn new skills and put them into action.” [Tr. 10/9/08 at 53] In the Northwest Labs report, participants in the leadership training rated the training as of high quality, useful and relevant to their work. [Ex. 477 at 6] But the participants criticized the training as lacking “specific practical, day-to-day examples for educators to use,” and as lacking follow through after the training. For example, one survey respondent reported there was “no one on the ground showing them how to do it.” [Id.]

District Coaches

86. The district coaches’ component of the interventions involves the Department (1) assigning a coach to each intervention district, and (2) providing the coaches with leadership training. [Ex. 454 at 9] In 2007-2008, the districts were required to pay the costs of the coaching from district funds. In 2008-2009, the Department intends to pay for the coaches. Former interim Commissioner Thompson testified that this change was

intended to make it clear to the coaches that they were working for and representing the Department, and not their assigned district. [Tr. 10/7/08 at 108]

87. Former Commissioner Roger Sampson testified that the purpose of the coaches was "to support the administration of the district [in] implementing the [improvement] plan with fidelity." [Tr. 10/6/08 at 159]

88. The Northwest Evaluation report indicated that "the primary purpose of the coaches was to support and monitor the implementation of the improvement plan with an emphasis on student learning and building district and principal leadership capacity as instructional leaders." [Ex. 477 at 1]

89. The Department initially selected each coach without input from the district. Diane George and Norm Eck testified that their district coaches did not have knowledge of or training in RTI, AIMSWeb or ACFA, apart from participating in the same State-provided training with personnel from their assigned districts. Dr. Davis testified that none of the coaches were experts in curriculum development. [Tr. 10/8/08 at 145]

90. The Northwest Lab Evaluation found that "the role of the coach was not understood among the coaches, superintendents, and principals." [Ex. 477 at 13; see also tr. 10/6/08 at 48-49] Further, "[m]ost respondents to the Leadership Survey reported that the coaches were not very helpful in assisting the district/schools to implement the core components of the improvement plan." [Ex. 477 at 14]

91. Testimony before this Court indicated that some coaches spent very few days in the course of the 2007-2008 school year at the school district, and the time that was spent was typically at the district offices, not in classrooms. [Cf. Ex. 2540 at 61733, tr.

6/11/08 at 40] Dr. Davis noted “there was nothing ... that required them or asked them to spend a great deal of time on instructional issues.” [Tr. 10/8/08 at 146] A review of the time records for one district coach indicates that the coach spent many, many more hours in trainings and meetings with DEED officials than conferring with the district's leadership, and no time at any of the school sites. [Ex. 2591]

V. Findings Regarding the Adequacy of the State's Intervention Efforts

A. The State has failed to insure that each school district's curriculum is aligned to the State's standards.

92. The instructional audits conducted in the fall of 2006 demonstrated that the curriculum in use in most of the intervention districts is not aligned to the State's performance standards. In one school district, the instructional audit concluded that “the district curriculum contains many gaps and is not fully aligned with the state GLEs” and “[there] was no evidence of any procedures to oversee the implementation of the school's curriculum other than teacher lesson plans.” [Ex. 2554 at 3] At another district, the auditors concluded “[t]here is no usable curriculum in place, and auditors found no evidence of procedures to monitor implementation of curriculum.” [Ex. 2556 at 2] And

in a third district, the auditors found that “[t]here is no evidence that the school is implementing the district's philosophy and definition of curriculum.” [Ex. 2557 at 2]

93. To its credit, the instructional audit of the Yupiit School District concluded that teachers in that district were providing instruction aligned with Alaska's Performance Standards. [Ex. 2558 at 3] But an auditor also described one school in that district as

“out of control” with “no evidence of any school-wide behavior standards for students or staff.” [Tr.6/11/08 at 82; Ex. 2558 at 61561]

94. The State’s interventions to date have not included any concerted effort to insure that the curriculum in each intervention district is aligned with the Grade Level Expectations (GLEs) for the State’s performance standards.³⁶ As of October 2008, Assistant Commissioner Les Morse testified that he had just begun that past month to ask each intervention district about their curriculum, “just to figure out what curriculums they do use, if they use a packaged commercial product curriculum, or if they’ve developed things and augmented that.” [Tr. 10/20/08 at 15] Mr. Morse indicated that the intervention districts are expected to show curriculum alignment by the fall of 2009, and added that the Department would be offering optional training on curriculum alignment to districts at statewide conferences during the 2008-09 school year to assist in that regard. [Id. at 32-33]

95. In explaining why curriculum alignment had not yet been addressed in the State’s intervention plans, Mr. Morse indicated, “[t]he plan is a foundation plan. It doesn’t have everything that has to happen in a district. The district is responsible for having a curriculum, seeing to it that it’s aligned with the standards. There are other things not mentioned in [the intervention plans] that must be part of a program too. This isn’t reflective of everything a district needs to do.” [Tr. 6/10/08 at 132] Mr. Morse clearly recognized the importance of building the fundamental skills of reading, writing and math into what he described as “a rich, interesting curriculum that brings in the

³⁶ See 4 AAC 06.850(c); 4 AAC 06.872(c). While the instructional audit regulation does explicitly address curriculum, the intervention regulations do not explicitly address curriculum alignment.

values of local community.” [/*d.* at 38] And he cautioned against being so data-driven in instruction that “you don’t think comprehensively about the curriculum and how you also embed these skills into a very rich and broad curriculum.” [/*d.*]

96. The current Commissioner, Larry LeDoux, acknowledged that to date the Department has not provided assistance to the intervention districts and the communities served by the districts in developing curriculum with the input of the parents and elders. [Tr. 10/8/08 at 13] And yet he also acknowledged that if you don’t involve the community in the local schools, “they close their collective doors and they disengage from education.” [/*d.* at 16]

B. *The State’s interventions have not included any attention to those content areas not covered by the State’s standardized testing.*

97. Eddy Jeans, the Department’s chief liaison with the Legislature, was unaware of any efforts being taken by the Department to ensure that students in intervention districts were receiving meaningful exposure to the content standards. [Tr. 10/7/08 at 32] Mr. Jeans also testified that, like the district-level interventions, the SB 285 school-level interventions are limited to reading, writing and math, “because that’s what we assess and that’s what we measure.” [/*d.*]

98. Dr. Eck testified that “[i]n some of the schools, it’s simply reading, writing, math and some science, and sometimes little else.” [Tr. 10/10/08 at 117] He asserted that schools do not have time under the intervention plans to provide meaningful instruction and opportunities in the other content standards. [/*d.*] “The emphasis is not on [a]

balanced curriculum, what we normally would consider for a well-rounded education.”

[/d. at 119] As a result, “our attendance rate is suffering dramatically.” [/d.]³⁷

99. Diane George likewise testified that the curriculum at the Yupiit schools has narrowed significantly: “A lot of things that draw kids to school are no longer offered,” and that, “for some students I think that has been a factor in dropping out.” [Tr. 10/21/08 at 179-181]

100. In addition to the risk of students becoming less engaged in school, Dr. Darling-Hammond identified another problem when the focus of instruction is narrowed to reading, writing and math: “you can end up getting scores up on certain kinds of narrow measures and actually depressing achievement later on because the curriculum is not allowing kids to develop the broader skills.” [Tr. 10/9/08 at 160-161]

C. The State's interventions are limited in scope and have not addressed the specific strengths and weaknesses of each chronically underperforming district.

101. Dr. Darling-Hammond described the current intervention plan as “a skeleton,” which “would need to have the actual resources added to it that would allow people to meet the task that's been put before them.” [Tr. 10/9/08 at 81]

102. In his expert report, John Davis opined that:

DEED's improvement plan is based on helping identify what students do and do not know. That is an excellent and necessary first step. The failure of the plan is that it does not provide effective intervention or guidance to the administrative staff or instructional staff as [to] what must be changed. This is because DEED does not have the resources or professionals with the knowledge base, nor

³⁷ Several witnesses testified that school attendance is also negatively impacted by the State's decision to disburse Permanent Fund Dividend checks during the middle of the school year instead of during school vacations periods. [See, e.g., tr. 10/10/08 at 119-120, 133; cf. tr. 6/11/08 at 13].

can it direct the necessary resources to place a professional team on site to help guide improvement.³⁸

Dr. Davis explained that his “criticism of the plan is it simply – it’s superficial, in terms that it’s topical. It doesn’t begin to scratch and dig down deeply into what we know about change -- the change process, school improvement process, about staff development process, and changing behaviors. So my criticism has been that it begins the process, but does not complete it.” [Tr. 10/10/08 at 35]

103. Similarly, while Dr. Eck supports the basic elements of the State’s plan, he testified that the plan is “cursory” ... “Doing the things the plan calls for just looks at indications. What we have to do is so much more in-depth.” [Tr. 10/10/08 at 179-180]

104. Dr. Whiteley described the plan components as a “boilerplate process,” as “initial intervention[s],” and as “somewhat minimalistic.” [Tr. 10/6/08 at 92-93, 107, 129] But he defended the uniformity in the plans because none of the intervention districts had a mechanism in place to analyze data and follow student performance. [*Id.* at 67]

105. Dr. Darling-Hammond testified that the State’s approach “has good ideas embedded in it,” but does not include “the intensive coaching and professional development that would be needed to go alongside these data tools” to be effective. [Tr.

10/9/08 at 29] Dr. Darling-Hammond persuasively testified that time alone (e.g. “staying the course”) will not be sufficient for the current interventions to lead to all students having a meaningful opportunity to become proficient. [Tr. 10/9/08 at 161]

106. The current interventions do not address efforts to improve student attendance. Nor do they address the related topic of enhancing the relationship between the school

³⁸ Ex. 454 at 7.

and the community so as to maximize the students' participation in their education. [Cf. tr. 6/9/08 at 182] In this regard, former interim Commissioner Thompson testified "before I left [the Department], we realized that we need to look at that community involvement, parent involvement piece. And many had said that that was something that was lacking from our interventions." [Tr. 10/7/08 at 118]

107. None of the witnesses who testified suggested that the fundamental elements of the State's interventions – formative assessments, improved leadership, and tailoring instruction to student need – are bad ideas or unrelated to school improvement. However, multiple witnesses persuasively testified that (1) the interventions as currently structured do not adequately target these elements, and (2) the elements in the State's plan are not sufficient, on their own, to ensure that students in the intervention districts have access to a constitutionally adequate education.

D. The State's interventions accord inadequate consideration of pre-Kindergarten and other intensive early learning initiatives designed to address the unique educational challenges faced by students in Alaska's chronically underperforming schools districts.

108. John Holst, called as a witness by the State, testified that "the majority of the students who come to school in all five of these districts are coming to school with deficits of one to two, in some cases three years in language development ... to the detriment of their being able to perform. And so they enter kindergarten well behind their counterparts in Anchorage or Sitka or Juneau or Kodiak, and so they are being asked to catch up." [Tr. 6/11/08 at 95-96]

109. Yupiit School District Assistant Superintendent Diane George testified that although kindergarteners in that district are often quite advanced in their gross and fine

motor skills, they are typically several years delayed in oral language development, and 75% lack emergent reading or writing skills. [Tr. 10/21/08 at 8-10] Similarly, Dr. Eck testified that students entering kindergarten in the NWABSD are far below average in math cognitive areas and emergent reading and writing skills. [Tr. 10/10/08 at 121] He believes that a high-quality pre-Kindergarten experience would be "very, very valuable" for students in Northwest Arctic. [*Id.*]³⁹

110. Other witnesses testified about the link between early literacy and later academic achievement. Former Commissioner Sampson commented that the research is "very definitive" that if a student is not reading at a proficient level by the third grade, the student's chances of ever catching up are "very, very slim." He added, "[i]n fact, it is a great indicator of our drop out rate." [Tr. 10/6/08 at 172] Likewise, the State's expert here, Dr. Guthrie, when consulting for State of New Hampshire, opined that "preschool appears to be a highly cost-effective way [to] increase student achievement," a position he continued to espouse in these proceedings. [Tr. 10/20/08 at 88, *citing* Ex. 480 at 43]

111. Similarly, when asked what additional support DEED could provide in the intervention districts, John Holst responded:

I would look for ways of providing language development to children prior to the time that they're five years old and enter kindergarten. I think that would be the single most powerful thing that we could do to -- instead of just trying to get kids to grow -- I mean, if you have a child that's three years behind, for the next three years they're expected to grow three

³⁹ While Northwest Arctic does currently offer a two-and-a-half hour per day pre-school program for four year olds, the program does not meet the standards for high-quality pre-K, such as certified teachers, professional training and an "intentional learning" educational environment. [Tr. 10/10/08 at 121] Witnesses for both parties testified that the positive known effects of pre-K are linked to high quality pre-K programs. [See, e.g., tr., 10/9/08 at 44; tr. 10/20/08 at 91]

years in -- two years each year in order to catch up. And that's really what the goals of what we're doing with this plan really are.⁴⁰

112. In her report, Linda Darling-Hammond stated:

[P]articularly for low income students or students who are coming into school as non-Native English speakers, students who are coming from a different cultural context without the elements of language development that schools expect, preschool education has large, well-documented effects on later success.⁴¹

113. The State's interventions do not address the significant language development gap known to exist in the intervention districts, despite its well-documented connection to student achievement.

E. The State's interventions do not address teaching capacity due to high turnover, teacher inexperience and unique educational challenges in Alaska's chronically underperforming school districts.

114. Dr. Darling-Hammond's expert report noted that "[s]uccessful interventions require ensuring that sufficient instructional capacity and leadership exist to make decisions about and implement effective instruction in response to student monitoring and testing." [Ex. 456 at 2] "Learning these skills may well require "sustained opportunities for learning ... how to differentiate instruction." [Tr. 10/9/08 at 22]

115. Dr. Darling-Hammond also noted that "students who learn in different ways, students who have exceptional needs, who may be non-Native English speakers, and so on ... often require different instructional strategies that require specific skills." [Ex.

456 at 3] "To the extent that these areas of knowledge and skill are not fully developed for some or all teachers, investments in professional development will be needed to

⁴⁰ Tr. 6/11/08 at 95-96.

⁴¹ Ex. 456 at 9-10.

develop teachers' capacity to make sound decisions and implement successful instruction." [Ex. 456 at 3]

116. Dr. Eck testified that the NWABSD experiences an average of 20-22% turnover per year, with ten percent of the teaching staff each year being brand new to teaching. [Tr. 10/10/08 at 113] "To have 20, 25 percent turnover just destroys the integrity of what you're doing. You just lose so much again." [Id. at 184] Dr. Eck also testified that the current in-service schedule does not provide new teachers with nearly enough training. He particularly stressed the need for in-depth professional development on curriculum, stating that, "we really need a couple weeks of training before school starts, of all teachers." [Id.]

117. Diane George testified that the Yupiit School District experienced 40% teacher turnover at the end of the 2007-2008 school year. [Tr. 10/21/08 at 17-18] And like NWABSD, compounding the turnover problem is the fact that a sizable portion of the incoming teachers each year are new to the teaching profession. [Id. at 14-15] The new-to-district teachers are generally not prepared to teach English Language Learners (ELL's) and disadvantaged students in rural Alaska, creating a need for increased training in oral language development and strategies for working with ELL students. [Id. at 15-19] Dr. Whiteley testified that his response to the challenges in the Yupiit School District would include improved professional development. He also noted that "a lot of districts leave considerable money on the table [of] their title monies that are earmarked for professional development." [Tr. 10/6/08 at 130-31]

118. Carol Doyle testified that teachers in Yukon-Koyukuk cannot effectively implement the interventions without assistance and training in developing and implementing in-classroom instructional strategies. [Doyle Depo. at 67] She added that a longer school year to provide for additional professional development “would really impact their teaching in the classroom.” [*Id.* at 68]

119. Former Commissioner Sampson acknowledged that the instructional audits showed a lack of effective instructional practices. [Tr. 10/6/08 at 185] He also acknowledged that the “best way” to address lack of effective instructional practices is through intensive, well-targeted professional development for teachers. [*Id.* at 186]

120. Dr. Guthrie recommended additional professional development as a consultant in New Hampshire:

Making changes in instruction as dramatic as those implied by new state curriculum standards almost always requires a substantial commitment of time and resources to ensure that teachers know and are able to teach the new content. At a minimum, if actual classroom instruction is to change, teachers should be provided two weeks full-time instruction, in-class coaching, and periodic follow-up training for two years.⁴²

121. The State’s intervention plans assume that the existing staff in chronically underperforming district already possesses adequate instructional experience and knowledge to determine appropriate instructional strategies for all students. But the instructional audits of these districts demonstrate that is clearly not the case.

122. The State’s current interventions have provided virtually no on-site assistance to the teachers and educators, or the school board in the intervention districts. The

⁴² See Plaintiffs’ Supplemental Designation re: Ex. 480

current Commissioner, Larry LeDoux, recognized this shortcoming in the Department's current interventions to date, and testified:

I want to make the ... instructional audit teams to have more potential to provide ongoing assistance ... I want to go in with a team that, if they look at a district and say, you've got some superintendent problems here, then I will have somebody who can work with that superintendent on an ongoing basis. If the board has forgotten what governance is and is trying to run the schools through whatever, then I will bring someone from the school board association to come in and work with that board, all with the intentions of building capacity in the district. I can't do interventions where we fly in and give orders, then leave. I can't come in and say, here's the curriculum you are going to use, this will solve your problems, because I guarantee as soon as we get on that plane, it will all collapse behind it.⁴³

123. Dr. Eck testified that his district needs -- and the Department currently lacks the capacity to provide -- content specialists who can come in and model effective instructional strategies. Taking Kotzebue as an example, Dr. Eck explained,

[M]y second grade teachers are struggling there right now, for whatever reason, the makeup of that group of three [teachers]. I need somebody who can come in, who is a great practitioner in RTI, and can take over a classroom for a week and model it. We don't have a model in the state who can just come in to do that.⁴⁴

124. Carol Doyle echoed the need for experienced master teachers and specialists who could model instructional strategies in the Yukon-Koyukuk district. She explained that the district needs more mentor teachers "providing not only support but actually getting down to the nitty-gritty and hands-on type of stuff with the students." [Doyle Depo. at 69]

⁴³ Tr. 10/8/08 at 57-58.

⁴⁴ Tr. 10/10/08 at 183.

125. John Holst testified that bringing experts to the districts to implement the Response to Instruction framework would help accelerate academic growth in struggling districts. [Tr. 6/11/08 at 103]

126. Dr. Whiteley testified that “the next step in some districts would be a more invasive intervention, and I think it would be along the lines of curriculum materials” as well as increased professional development. [Tr. 10/6/08 at 129-130]

127. In his expert report, Dr. Davis faults the State’s plan for failing to provide “availability of expertise on-site to monitor implementation, provide support and mentoring, and evaluate efforts. [Ex. 454 at 8]

128. Dr. Darling-Hammond explained: “for people to learn a new skill, they need consistent, readily available, at-the-elbow coaching for a period of time so that they can learn the skill, practice the skill, get feedback about how to improve.” [Tr. 10/9/08 at 40]

129. Dr. Darling-Hammond also rejected the State’s suggestion that providing this kind of support would cause districts to become “dependent” on the State. To the contrary, she testified that providing intensive content-specialists and other expert support builds district capacity. [/d. at 41-42]

130. The State’s interventions have made no effort to address the turnover problems in the intervention districts or to address the need for the considerable additional professional development necessitated by those turnover problems.

131. According to Dr. Darling-Hammond’s expert report, “successful interventions address concerns related to recruitment and retention of quality teachers.” [Ex. 456 at 4] She added, teacher quality “is the strongest predictor of how students will perform.”

And “schools with lower turnover are generally more successful because there is a knowledge base that gets built and gets shared inside the school ... and there’s stability and coherence that enables overall higher learning.” [Tr. 10/9/08 at 43]

132. John Davis explained that retention efforts are key to successful improvement efforts because meaningful capacity building is hindered by constant and significant turnover. [Tr. 10/8/08 at 156-157] This testimony is echoed by the Northwest Lab evaluation, which reported: “A concern stated in coaches and superintendents interviews was how school staff turnover might affect the implementation of the improvement plans. Questions were raised about how to train or re-train staff and build sustainability.” [Ex. 477 at 10]

VI. *Post-intervention Test Scores Provide No Assurance that the Interventions are Working*

133. Two rounds of SBA testing have occurred since the trial on the first phase of this case. The most recent round -- the 2007-2008 testing -- occurred nearly a year after this Court issued its order directing the State to provide “considerably more assistance and support” to chronically underperforming districts in a “concerted effort” to ensure that all students had a meaningful opportunity to achieve proficiency in the state’s performance standards. The State’s interventions began in earnest in most of the intervention districts in the fall of 2007. However, a comparison of the 2007 and 2008 test results for the five intervention districts show virtually no positive improvement in proficiency and, in some cases, a decline in proficiency during that time.

134. At the close of the 2006-2007 school year, 70% of students in the Yupiit School District were below proficient in reading, 76% were below proficient in writing, and 73% were below proficient in math. The numbers for that district are even worse for the 2007-2008 school year, with 70% still below proficient in reading, 81% below proficient in writing, and 79% below proficient in math. [Exs. 2492, 2499]⁴⁵

135. At the close of the 2006-2007 school year, 43% of students in the Northwest Arctic Borough School District were below proficient in reading, 54% were below proficient in writing, and 50% were below proficient in math. The numbers were virtually unchanged for the 2007-2008 school year, with 43% still below proficient in reading, 54% below proficient in writing, and 48% below proficient in math. [Exs. 2488, 2496]

136. At the close of the 2006-2007 school year, 58% of students in the Lower Yukon School District were below proficient in reading, 69% were below proficient in writing, and 70% were below proficient in math. The numbers were virtually unchanged for the 2007-2008 school year, with 56% below proficient in reading, 67% below proficient in writing, and 68% below proficient in math. [Exs. 2487, 2495]

137. At the close of the 2006-2007 school year, 56% of students in the Yukon Flats School District were below proficient in reading, 68% were below proficient in writing, and 67% were below proficient in math. The numbers were slightly improved in reading, but worsened in math and writing for the 2007-2008 school year, with 52% below proficient in reading, but 73% below proficient in writing, and 69% below proficient in math. [Exs. 2490, 2497]

⁴⁵ And yet, as Les Morse correctly noted, Yupiit has demonstrated significant gains in student proficiency since 2005. In 2005, 77% of the students were below proficient in reading, 86% were below proficient in writing, and 91% below proficient in math. [Ex. 2492; tr. 6/10/08 at 13]

138. At the close of the 2006-2007 school year, 41% of students in Yukon-Koyukuk School District were below proficient in reading, 58% were below proficient in writing, and 52% were below proficient in math. The numbers for the 2007-2008 school year were slightly improved in reading, but virtually unchanged in writing and math, with 37% below proficient in reading, 57% below proficient in writing, and 54% below proficient in math. [Exs. 2491, 2498]

139. The State also presented evidence regarding several districts which were the subject of testimony during the first phase of the trial but in which the State had not intervened. Those districts, too, continue to have significant percentages of students failing to achieve proficiency.

140. At the close of the 2006-2007 school year, 44% of students in the Bering Strait School District were below proficient in reading, 57% were below proficient in writing, and 54% were below proficient in math. The numbers were virtually unchanged or worsened for the 2007-2008 school year, with 47% below proficient in reading, 56% below proficient in writing, and 57% below proficient in math. [Exs. 2485, 2493]

141. At the close of the 2006-2007 school year, 56% of students in the Kuspuks School District were below proficient in reading, 63% were below proficient in writing, and 63% were below proficient in math. The numbers were virtually unchanged or worsened for the 2007-2008 school year, with 56% below proficient in reading, 66% below proficient in writing, and 63% below proficient in math. [Exs. 2486, 2494]

142. Assistant Commissioner Les Morse acknowledged that scores in the intervention districts for the past two years are “essentially flat.” [Tr. 6/10/08 at 82-83] Mr. Morse

testified that it would likely take “five to seven years” before one could see “measurable gains” occurring as a result of the existing interventions. [Tr. 6/10/08 at 22-23]

143. Several State witnesses opined that the success of the interventions might vary depending on the districts’ fidelity to the interventions. And yet the testimony of witnesses working with the districts to implement the interventions described hard work, commitment and dedication to improving student achievement by district personnel. [Tr. 6/11/08 at 4; tr. 10/6/08 at 85-86; tr.10/8/08 at 47]

144. Other testimony demonstrated that significantly greater achievement gains are achievable in far shorter times. For example, former Commissioner Roger Sampson testified that when he was superintendent of the Chugach School District, the district experienced gains of more than 5% per year for several years. [Tr. 10/6/08 at 183] Mr. Sampson testified that he expected comparable or greater gains from the interventions, at least in those “schools where they engaged and embraced the process.” [*Id.* at 183]

145. Dr. Darling-Hammond testified about research by the National Educational Goals Panel on states which have successfully narrowed the achievement gap. The Panel has studied several states, including North Carolina, Connecticut and New Jersey, “all of whom have had very steep increases in major closing of the [achievement] gap.” [Tr. 10/9/08 at 76] The common themes in these states is that “they invested substantially in improving the quality of teacher preparation, raising the certification standards [and] providing extensive professional development. [*Id.*] Dr. Darling-Hammond added that in New Jersey, a “set of literacy trainings and coaches ... were available in the high-need districts. Then they also put in place ... high-quality

preschool, very carefully managed. And there was just -- this is just in the last few years, a stunning increase in student achievement for African-American and Hispanic students in New Jersey that had previously been underperforming for a very, very long time." [Id.]

VII. The Department Needs to Assess and Improve its Own Capacity to Intervene Effectively

146. Many of the problems encountered by the Department in attempting to design and implement effective and adequate interventions appear to stem from limitations in the Department's own capacity to implement successful reforms.

147. John Holst explained that the Department has "become a compliance organization primarily and [is] not viewed in any other way other than compliance at this point, and they're doing very little, in my opinion, to overcome that with trying to develop relationships which would help them to be helpful to these five districts as well as others." [Tr. 6/11/08 at 110]

148. Linda Darling-Hammond explained that, just as districts need capacity, there needs to be capacity at the state level as well:

A more efficient state system operates when the state is able to fulfill its responsibilities well and doesn't leave that to every little local district to try to have to replicate or create because the state hasn't provided some of the foundation that's needed for the districts to be able to proceed efficiently. [Tr. 10/9/08 at 65]

149. Dr. Guthrie, the State's expert, agreed that "the capacity of the intervening body" is a critical component for a successful intervention. [Tr. 10/20/08 at 117]

150. Norm Eck testified that “we need a strengthened Department of Education. I believe in our Department of Education and I believe in the improvement program that we have going on. I support it, and I’m glad to be a part of it. But we can be successful only if we have a higher level of support.” [10/10/08 at 126]

151. John Davis also testified regarding the Department that “they don’t have the staffing, they don’t have the resources ... in order to do the kind of sustained in-service activity that going to be required in order to make the changes we need.” [Tr. 10/8/08 at 153] He added that districts are leery of working with the Department because of the belief that “the department does not have the expertise [at] this time.” [*Id.* at 157]

152. As stated by one of the district coaches, “how [an intervention] is accomplished may be as important as what is actually done.” [Ex. 2469A at 4] “At the very least, a sensitivity to how DEED decisions and actions impact improvement sites and districts has to become a priority.” [*Id.*]

153. At the time of the October 2008 hearing, the Department was attempting to add four technical assistants as well as a director of school improvement and two specialist teachers to provide on-site assistance at schools. [Tr. 10/8/08 at 14-20] But as of that

date, the Department had been unable to find any qualified applicants to fill any of these

positions.

154. Although the record demonstrates some recent improvements, the Department’s imposition of the initial improvement plans, its manner of selection of coaches, and other actions were undertaken with insufficient input from the districts,

thereby negatively impacting the likelihood of prompt and significant improvement in student achievement.

155. The evidence indicated that the Department is currently undertaking some efforts to expand its capacity to provide assistance to the districts. But no evidence was presented that the Department has undertaken any effort to assess its capacity to determine what it would require to effectively assist districts and schools to provide students with a constitutionally adequate education. Yet Eddy Jeans, the Department's legislative liaison, testified that "the legislature gave us a very clear message that when we determine what additional resources we need, we are to come back to them and ask for them." [Tr. 10/7/08 at 46]

CONCLUSIONS OF LAW

1. This Court's June 2007 Decision and Order concluded that the Department was not fulfilling its constitutional oversight responsibility in chronically underperforming districts and schools, and ordered the Department to take adequate remedial measures to establish compliance. The State asks this Court to now find that the deficiencies identified in the June 2007 Order have been cured, and that this Court should accept "the State's system as compliant with the Education Clause."⁴⁶ But the Plaintiffs ask this Court to find that "the State's current intervention efforts fail to comply with the requirements of the Court's June 2007 Order and that the Department continues to be

⁴⁶ State's Proposed Findings of Fact and Conclusions of Law at 53, ¶ 22.

out of compliance with the oversight duties imposed by the Education Clause of the Alaska Constitution.”⁴⁷

2. In an order issued near the outset of this case in June 2006, this Court held that under the Education Clause, it is the Court’s responsibility “to determine a constitutional floor with respect to educational adequacy, and to determine if that constitutional floor is currently being met.”⁴⁸

3. The District Plaintiffs remaining in this action now seek to have this Court expressly hold that the Education Clause establishes a fundamental right to education. But at this juncture, where the issue is the adequacy of the State’s oversight of and assistance to chronically underperforming school districts, and no individual student plaintiffs are asserting that they are not being accorded their constitutional right to an education, this Court will instead maintain the “constitutional floor” analysis first set out in this case in June 2006 and determine whether the State’s current efforts to comply with the Education Clause are adequate. Stated differently -- has the State now demonstrated that it is fulfilling its constitutional responsibility to “maintain a system of public schools?”⁴⁹

4. Because the State has been ordered to take remedial action to correct an ongoing constitutional breach, it bears the burden of proof on the issue of compliance.

⁴⁷ District Plaintiffs’ Proposed Findings of Fact and Conclusions of Law at 54, ¶ 20.

⁴⁸ *Order re State’s Motion to Establish Standard of Review* at 4, quoting *Campaign for Fiscal Equity, Inc. v. State of New York*, 86 N.Y. 2d 307, 315 (N.Y. 1995).

⁴⁹ Alaska Const. Article VII, § 1.

5. The first prong of the June 2007 Order addressed the State's obligation to establish "clear standards" for school districts to retain full local control.⁵⁰ Certainly, the Legislature has the authority to delegate its constitutional responsibility to maintain public schools to the Department of Education and Early Development as well as to local school districts.⁵¹ But for the reasons more fully articulated in this Court's June 2007 decision, when making a broad delegation to local school districts of the constitutional responsibility to maintain schools, the State "must establish clear standards" for those districts necessary to retain local control.⁵²

6. By clearly describing the boundaries that insure full local control, these standards correspondingly serve to define the threshold that activates the Department's constitutional duty to intervene and provide oversight and assistance to local officials. Clear standards should also reduce the risk of premature and untimely intervention by giving specific and reliable notice to all interested parties of the circumstances that would activate the State's duty to intervene and assist.

7. The State has developed comprehensive desk audit and instructional audit regulations to determine those districts and schools that necessitate State intervention.

The District Plaintiffs in this action are not asserting that the State has improperly intervened in certain districts, or that the State should have intervened in other districts.

The evidence at the compliance hearings did demonstrate several concerns with the audit process, such as restrictions on the distribution of the narrative audit summaries,

⁵⁰ Decision and Order at 189.

⁵¹ Decision and Order at 162-165, 173, ¶ 2.

⁵² Decision and Order at 189.

and the lack of clear standards for when an instructional audit will not result in an intervention. But on the current record, this Court agrees with the State with respect to this component of this Court's June 2007 Order, such that any constitutional questions arising from the details of implementing the audit regulations should be asserted by future challenge, and are not directly before this Court at this time. See *State v. Alaska Civil Liberties Union*, 159 P.3d 513, 514-515 (Alaska 2006).⁵³

8. For the same reasons, this Court finds that any constitutional questions arising from the implementation of school-level interventions are not now directly before this Court, as to date no such interventions have been undertaken and no party is before this Court at this time asserting a claim of unconstitutionality with respect to those potential school-level interventions.

9. The "clear standards" prong of this Court's June 2007 Decision and Order contains a separate component that is applicable to the intervention districts. The Order also emphasized the need for the State to "insure that each school district has a demonstrated plan to provide children a meaningful opportunity to achieve proficiency in the State's performance standards, and meaningful exposure on the remaining content standards, and insure that the district plan is fully implemented and actually in use in the district classrooms."⁵⁴

10. Although the Department has created a set of content standards, it has not provided clear guidance to school districts as to how much and what kind of exposure to

⁵³ Likewise, constitutional questions that might arise from SB 285's provisions concerning the potential redirection of appropriations and redirection of school district personnel are not properly before this Court at this time.

⁵⁴ Decision and Order at 189, ¶ 41.

those standards must be given in order to insure that students receive an education that is adequately broad in content, as well as adequately demanding in performance.

11. Without clear standards to guide them in attempting to meet the content standards, the underperforming districts focusing their efforts on meeting performance standards have no way of ensuring that their students have an adequate opportunity to obtain a well-rounded education, and not just an education that builds proficiency in a set of narrow, albeit critical, skills. Likewise, the Department has not articulated any standard that it will apply to determine whether and when its oversight duty requires it to give troubled districts assistance in assuring meaningful exposure to the content standards.

12. For the foregoing reasons, this Court finds that the State has not met its constitutional responsibility to “maintain a system of public schools” with respect to this component of the first prong of the June 2007 Order.

13. The second prong of the June 2007 Order focused on the State’s oversight responsibility of chronically underperforming districts, and required the State to provide “considerably more” “oversight,” “assistance” and “direction” in “a concerted effort to remedy the situation.”⁵⁵

14. Strong and persuasive evidence was presented at the compliance hearing demonstrating that, for a variety of reasons, the State’s current district-level interventions have fallen considerably short of complying with this oversight requirement in two basic respects: first, because the remedial measures included in the interventions have not been effectively implemented and have not adequately meet the

⁵⁵Decision and Order at 189.

needs they were meant to serve; and, second, because the interventions target an unjustifiably narrow range of problems, while ignoring many other educational problems that these local districts have not adequately addressed on their own.

15. The State's district-level intervention plans provide districts with measurement and assessment tools and some organizational assistance meant to enhance the districts' use of those tools. But the Department underestimated the complexity involved in implementing the use of tools like "Response to Instruction" and AIMSWeb in chronically underperforming districts. As a result, the State has not provided sufficient training and technical support to allow the tools to be effectively and efficiently implemented. Moreover, the State's intervention plans mistakenly assumed that the districts would have the expertise and experience to make appropriate use of the assessment tools after implementation, and as a result did not provide adequate follow up and on-site assistance.

16. The State did not adequately tailor its remedial efforts to the particular needs of the schools and districts in which they were implemented. To the contrary, the Department's only significant effort to assess particularized needs -- its instructional audits -- played no role in the Department's choice of the remedial measures included in its district interventions. Nor did the Department make any systematic effort to monitor and evaluate its intervention efforts so that its remedial measures could be adjusted, refined, and supplemented when information established the need for change.

17. Despite the June 2007 Order's specific mandate of a "concerted effort" to provide "considerably more" assistance in resolving the districts' problems, the State's own

witnesses described the Department's interventions as considerably less. Multiple witnesses described the current intervention components as "somewhat minimalistic," an "initial intervention," a "first step," or a "foundation" for other needed elements. But in chronically underperforming school districts, setting up an initial intervention, then waiting five to seven years as the Department proposes to assess the results is not sufficient to remedy the constitutional violations identified in the June 2007 Order.⁵⁶

18. The State has also failed to adequately address its constitutional responsibility to "insure that its educational standards are being implemented at the local level."⁵⁷ Instead, it appears that the State is just beginning to determine the extent to which a curriculum aligned to the State's performance standards is being taught in all the public schools in this state. The State asserts that its approach "to focus the first years of the intervention on changing the delivery of instruction" and then "dealing with the issue of curriculum was based on appropriate professional judgment."⁵⁸ But all public schools in this state should be teaching a curriculum that includes (yet certainly should not be limited to) materials aligned with the State's performance standards. The instructional audits of the chronically underperforming districts that the Department undertook in the fall of 2006 -- over two years ago -- clearly demonstrated that was not the case. In these circumstances, an incremental, minimalist initial approach, that is only now beginning to address curriculum, is constitutionally inadequate.

⁵⁶ See, *supra*, Findings at paragraph 141.

⁵⁷ Decision and Order at 186.

⁵⁸ State's Proposed Findings of Fact and Conclusions of Law at 17, ¶ 22.

19. Positive evidence concerning the interventions has been presented. For example, many of the technical and organizational problems that initially surfaced have been addressed and resolved, collaborative meetings appear to have been quite helpful at many schools, and additional training has been provided. [See, e.g., tr. 10/6/08 at 45-47] Pointing to this progress, the State's expert, Dr. Guthrie, urges that the best thing to do at this juncture is essentially nothing – to wait for several years in order to allow the current remedial measures an opportunity to work. The State echoes this position, urging the Court to conclude that the State is doing enough, that it will continue to assist chronically underperforming schools, and that this action should now be dismissed.

20. A “first step” or “initial intervention” or “somewhat minimalistic” approach may well be the best approach in some settings, as when the Department initiates timely steps to address incipient problems arising well before a district chronically fails. But here, the districts targeted for intervention are districts with chronically underperforming schools -- schools with lengthy histories of failing to overcome the achievement gap for generations of children -- and the Department was ordered to take concerted remedial action because it has violated its constitutional oversight duty by failing to meaningfully intervene before the problems became chronic.

21. The parties do not dispute that the intervention districts face significant hurdles in attempting to correct their students' underperformance, including geographic, cultural, environmental and cultural influences. But the evidence also establishes that there is an array of promising, research-backed remedial measures to address the educational needs of students in these districts which have not yet been successfully implemented.

Such measures could include efforts to build in-house expertise, to increase the level of available teaching capacity, to create meaningful incentives to promote the recruitment and retention of high quality teachers, to provide content specialists, on-site coaches and mentors, targeted educational resources, and more extensive professional development focused on the particularized needs of the intervention districts. They could also include pre-K, curriculum development and alignment, and resources directed at improving student attendance and the school's interface with the local community.

22. Although the State asserted in its closing argument that teaching capacity is a problem for local districts to address, teacher qualifications and training are controlled by the State through the certification process.⁵⁹ And the State did not demonstrate an insurmountable conflict between local control/local capacity on the one hand, and State assistance with targeted support on the other hand. The two are complementary, not mutually exclusive: "A more efficient state system operates when the state is able to fulfill its responsibilities well and doesn't leave that to every little local district to try to have to replicate or create because the state hasn't provided some of the foundation that's needed for the districts to be able to proceed effectively." [Tr. 10/9/08 at 65; Dr. Darling-Hammond] And, in any event, "local control does not supersede a child's right to learn."

[Tr. 10/8/08 at 185; Dr. John Davis]

23. To date, the State has categorically declined to consider an early-education component such as pre-K in its interventions. In ruling out this option, the State has relied on this Court's holding that the Education Clause does not require pre-K to be included as

⁵⁹ AS 14.20.020; 4 AAC 12.200 – 4 AAC 12.900.

an integral part of the system of public education that the Legislature must routinely provide throughout the state.⁶⁰ But that ruling was not intended to exempt pre-K from being considered and used as a case-specific measure to remedy a constitutional violation.

24. During the 2008 hearings the State occasionally referred to the problem of children being unprepared to begin school as stemming from problems within the community. These references echoed the report of the State's expert, Dr. Guthrie, who referred to "cultural and community misalignment."⁶¹ But to the extent local conditions create unique educational problems that impair a public school's ability to provide a constitutionally adequate education, then the school district and the Department have a constitutional duty to address the educational aspects of those problems that are amenable to educational solutions. And when a local district lacks the capability to resolve these educational problems on its own, the Department's oversight duty requires it to intervene and provide assistance to the local district in a concerted effort to remedy these problems. This Court finds persuasive the response of a New York court to a similar argument, which "rejects the argument that the state is excused from its constitutional obligations when public school students present with socio-economic deficits."⁶² Conditions within a community do not diminish the State's constitutional duty to "maintain a system of public schools open to all children of the State."

⁶⁰ Decision and Order at 177, ¶¶ 11, 12.

⁶¹ Ex. 2584 at 62406-07.

⁶² *Campaign For Fiscal Equity v. State*, 719 N.Y.S.2d 475, 516 (Sup. Ct. N.Y. 2001), *aff'd*, 769 N.Y.S.2d 106, 116 (N.Y. 2003).

25. In addition to addressing the Education Clause of Alaska's Constitution, this Court's June 2007 Order held that due process is violated if the State withheld high school diplomas from students in chronically underperforming districts who had not passed the HSGQE but were "not being accorded a meaningful opportunity to acquire proficiency in the very material that is tested on the exam,"⁶³ when the State had failed to provide adequate oversight and assistance to the district.

26. The State has now required the intervention districts to submit copies of their HSGQE remediation plans to the Department for review. But this Court's expectations were, and are, that in each chronically underperforming school district, the Department would immediately insure that an individualized remedial plan had been developed for each current 11th and 12th grader who has not yet passed the exam, including but not limited to appropriate formative assessments, and that each such student would have a designated professional at the school district (or Department, if necessary) with the responsibility of monitoring that student's remedial plan. In addition, the Department, through on-site visits and follow-up interviews, would insure that such a plan was actually in place for each of the students in chronically underperforming districts who had not yet passed the exam. To date, there is no indication that this has occurred in any of the intervention districts.

27. Based upon all of the evidence presented, this Court finds that the Department, through delegation from the Legislature, is not currently meeting the State's constitutional responsibility to "maintain a system of public schools open to all children of the State." The schools in the chronically underperforming school districts are not constitutionally

⁶³ Decision and Order at 193-194.

adequate; the Education Clause requires considerably more from the State in the way of oversight and assistance to those districts. And yet, while this Court has identified several shortcomings in the above Findings, it may well be that the requisite constitutional floor could be met without all of those deficiencies being fully rectified. Rather, it is the entirety of the deficiencies which together result in this Court's finding that the requisite constitutional floor has not been met at this time.

28. The Court further concludes, however, that the Department has made good faith efforts to achieve compliance with the June 2007 Order and the Education Clause and that the deficiencies in its efforts to date may well stem from uncertainty about the extent of the requirements in the June 2007 Order and the scope of the Department's oversight responsibilities. Moreover, the dedication to school improvement of the many educators in this process -- including the educators and other personnel within the Department and in the school districts -- is well evident and deserving of considerable respect. For these reasons, this Court will accord to the Department an additional opportunity to comply voluntarily with requirements of the Education Clause and this Court's orders, as further directed below.

ORDER

To establish compliance, IT IS ORDERED that the State shall proceed as follows:

A. Prepare and file with this Court a draft of standards that address the State's constitutional responsibility to insure that chronically underperforming school

districts are providing students in those districts with meaningful exposure to the State's content standards.

B. Review, reconsider, and -- after consulting with the districts and giving due considerations to their views -- file with this Court revised district intervention plans that address and incorporate as appropriate remedial measures related to each of the problem areas identified in these Findings. [See Findings of Fact, Parts V, A-E and Part VII]

C. File with this Court a plan of action that addresses the concerns identified in these Findings with respect to the adequacy of the remediation plans in the intervention districts for the High School Graduation Qualifying Exam.

Given the Department's continuing non-compliance with its constitutional duty to date, the time that has already been lost in attempting to establish compliance, and the severe consequences to students in the intervention districts caused by continued non-compliance, time is of the essence at this point in the proceedings. Accordingly, the State shall file and serve the materials described above no later than sixty days from the date of distribution of this Order. The State is strongly encouraged to work closely with each of the intervention districts in preparing these materials. The District Plaintiffs are accorded ten days thereafter to file and serve any objections. Additional proceedings shall be scheduled thereafter as warranted.

IT IS SO ORDERED this 4th day of February, 2009.

Sharon Gleason
Sharon L. Gleason
Judge of the Superior Court

I certify that on 2-4-09 a copy
of the above was mailed to each of the following at
their address of record (list name if not an agency)

☒ CSED ☐ AG ☐ PD ☐ DA

[Signature]
Deputy Clerk / Secretary

Friday
AG
Bryner