



received
April 28, 2010

Alaska State Legislature HOUSE BUSH CAUCUS

April 10, 2010

Senator Meyer, Co-Chair
Legislative Budget and Audit Committee
State Capitol, Room 101
Juneau, AK 99811

Representative Hawker, Co-Chair
Legislative Budget and Audit Committee
State Capitol, Room 505
Juneau, AK 99811

Dear Senator Meyer and Representative Hawker,

We, the Bush Caucus, would like to request an audit of the Department of Education and Early Childhood Development, hereinafter the Department, as their activity pertains to *Moore v. State of Alaska*. We were recently briefed on this case and have some concerns about the progress being made to bring the state into compliance with Judge Gleason's orders.

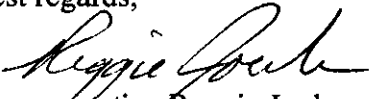
We would like the audit to focus on three specific areas. First, the audit should outline the measures that are being taken to address the issues that were raised in *Moore* and the effectiveness of those measures. Second, the audit should identify the ways in which the Department could more effectively support school districts across the state in their capacity to create educational systems consistent with Judge Gleason's March 31, 2010 order. Third, the audit should research the cost and implementation process for a pre-kindergarten program in the targeted districts as identified in the lawsuit.

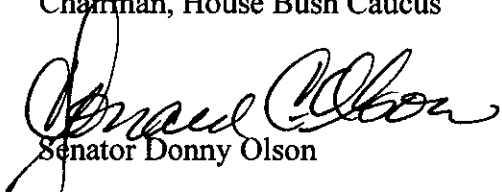
Among the attached documents you will find a list of independent education experts. Since the state is a party to the litigation, the Caucus feels that it would be appropriate to draw on the expertise of an independent third party.

The Court ruled on this matter in 2007 and, as evidenced by Judge Gleason's most recent order, there are several significant issues that still need to be addressed. This calls into question the effectiveness of the measures that the Department has taken up to this point.

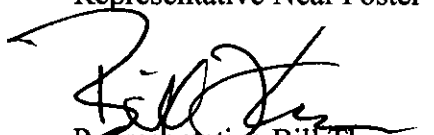
We believe that it is time for the legislature to take a more active role in this matter and an audit of the Department would lay the groundwork for further positive action. Please feel free to contact us with any questions or concerns on this matter.

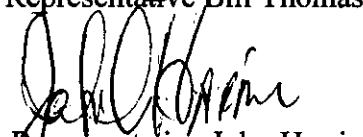
Best regards,

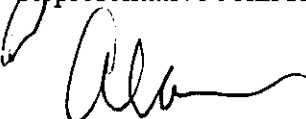

Representative Reggie Joule
Chairman, House Bush Caucus


Senator Donny Olson


Representative Neal Foster

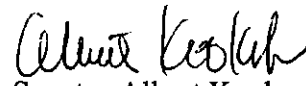

Representative Bill Thomas

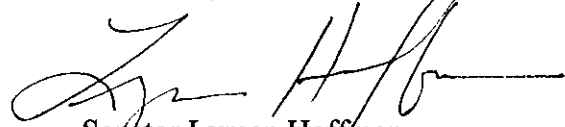

Representative John Harris



Representative Alan Austerman


Representative Beth Kerttula

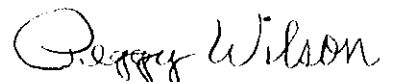

Representative Paul Seaton


Senator Albert Kookesh
Chairman, Senate Bush Caucus

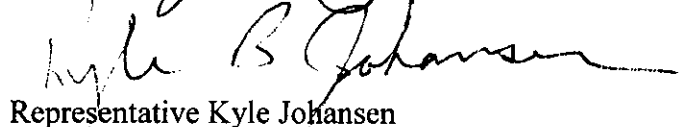

Senator Lyman Hoffman


Representative Bryce Edgmon


Representative Bob Herron


Representative Peggy Wilson


Representative Cathy Muñoz


Representative Kyle Johansen


Representative Woodie Salmon

Potential Auditors

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Note: “Parthenon’s efforts in supporting public education are grounded in deep and long-term partnerships with leading U.S. state departments of education, school districts, school networks, and foundations that support public education reform. Across all public sector and foundation engagements, we focus on education innovation, reform, and operations in order to raise student outcomes, improve system efficiency, increase college and workforce readiness, and eliminate persistent student achievement gaps. Since 2002, Parthenon has completed more than 100 strategic education projects with a broad range of clients across the U.S. public education sector, including individual schools, school management networks, school districts and state departments of education, as well as leading national foundations.”

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Note: Interactive is managed by Dr. Mann, an Emeritus Professor of Education at Columbia University (Teachers College and the School for International and Public Affairs). Dr. Mann has proposed putting together a team of experts in state education department leadership to assess and address the questions at issue here.

Susan A. Tucker, Ph.D.
Evaluation & Development Associates LLC
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Note: Dr. Tucker holds a PhD in educational psychology and program evaluation. She was an assistant superintendent in rural Alaska and knows the state well. She has extensive experience conducting large-scale educational program evaluations, including within Alaska schools.

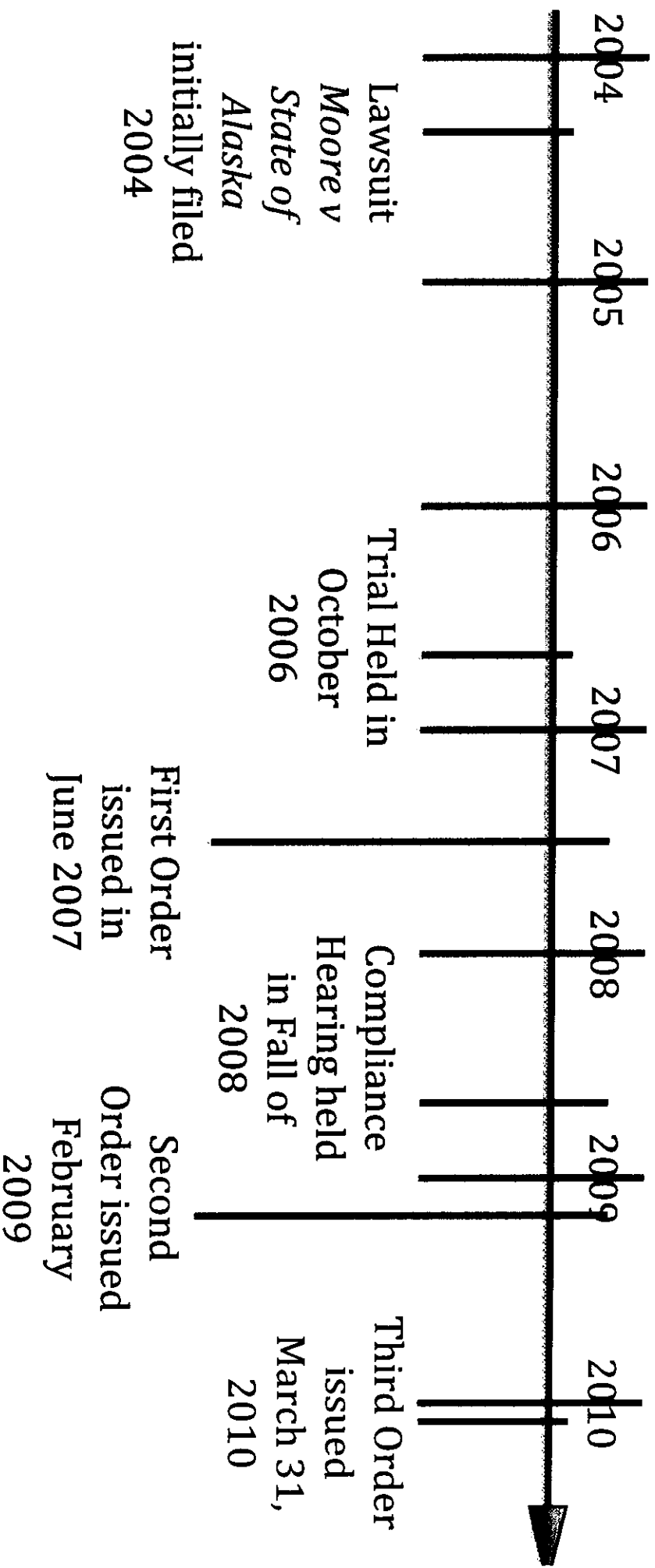
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Note: The Bridgespan Group consults with departments of education, school districts and educational nonprofits nationwide on topics including education reform and enhancing educational achievement, and closing the achievement gap.

KPMG
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Note: KPMG conducted a comprehensive audit of the New Jersey department of education as part of educational adequacy litigation in that state.

Timeline for *Moore v State of Alaska*



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

KRISTINE MOORE, et al.,

Plaintiffs,

vs.

STATE OF ALASKA,

Defendant.

JDO

MAR 31 2010

Case No. 3AN-04-9756 CI

ORDER ON REVIEW OF 2009 SUBMISSIONS

The Education Clause of the Alaska Constitution provides that "the legislature shall by general law establish and maintain a system of public schools open to all children of the State."¹ On June 21, 2007 – nearly three years ago – this Court issued a Decision and Order that concluded that while the State may delegate its responsibility to maintain public schools to local school districts, as it had done, it had failed to exercise adequate supervision and oversight of chronically underperforming schools within the state. Specifically, this Court held in June 2007 that the State "has failed to identify those schools within the state that are not according to children a meaningful opportunity to acquire proficiency in the subject areas tested by the State and meaningful exposure to the other content areas in the State's education standards. And as to those schools that are deficient in that regard, the State has failed to provide

¹ Alaska Constitution, Article VII, Section 1.

adequate supervision and oversight in a concerted effort to remedy that situation.”² This Court also held in June 2007 that the due process rights of children in underperforming school districts is violated when the State conditions the receipt of a high school diploma on the successful passage of the High School Graduation Qualifying Exam, when the students in such districts “have not been accorded a meaningful opportunity to learn the material on the exam – an opportunity that the State is constitutionally obligated to provide to them.”³

Thereafter, evidentiary hearings were held before this Court in 2008 to assess the adequacy of the State’s efforts to remedy the deficiencies this Court had identified in the June 2007 Order. On February 4, 2009, this Court issued its Findings of Fact, Conclusion of Law and Order. This Court concluded then as follows:

Based upon all the evidence presented, this Court finds that the Department [of Education and Early Development], 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 adequate; the Education Clause requires considerably more from the State in the way of oversight and assistance to those districts.⁴

The February 2009 Order directed the State to file with the Court each of the following: (1) 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; (2) a plan of action that demonstrated adequate remediation plans for students in the intervention districts

² Decision and Order of June 21, 2007 at 194.

³ *Id.* at 195.

⁴ February 4, 2009 Findings at 56-57.

for the High School Graduation Qualifying Exam; and (3) revised district intervention plans that address and incorporate as appropriate remedial measures that relate to each of the problem areas that the Court had identified in the Findings. The areas that the Decision identified as problematic included the lack of curriculum alignment, a lack of attention to content areas not covered by the State's standardized testing, a lack of attention to each of the specific strengths and weaknesses of each chronically underperforming district, a lack of consideration of pre-Kindergarten and other intensive early learning initiatives, a lack of attention to addressing teaching capacity deficiencies, and the Department's own capacity deficiencies to assist the chronically underperforming school districts.

Both parties have since filed considerable documentation with the Court. In 2009, the State was intervening in five school districts that the State had identified as chronically underperforming: Yupiit, Lower Yukon, Yukon Flats, Yukon-Koyukuk, and Northwest Arctic Borough School District. The parties' 2009 submissions to this Court, consistent with this Court's prior orders, were focused on the State's efforts in those five school districts. The Plaintiffs are not asserting that the State should be intervening in fewer or other school districts, or that the State's method for identifying those districts and schools in which it will intervene is constitutionally infirm.

The State asserts that "[s]ince 2005, the school improvement process in Alaska has been moving forward by leaps and bounds."⁵ It maintains that it has demonstrated that it has fully complied with this Court's February 2009 Order, and now has in place a

⁵ State's Memo. in Support of Filings Required by the February 4, 2009 Decision at 1.

system of accountability and oversight that meets its constitutional obligations. Accordingly, it asks this Court "to find the State in compliance with Section 1 of Article VII of the Alaska Constitution, and dismiss this case."⁶ The Plaintiffs disagree. They "urge the Court to find the State in continued noncompliance" with the Education Clause. And the Plaintiffs urge this Court "to appoint a Special Master to determine the specific, targeted educational resources necessary to bring the State into compliance with its constitutional obligations."⁷ In response, the State asserts that continuing this litigation is unnecessary because "the State has more than met this Court's specifications for state oversight of education."⁸ And it asserts that "if further proceedings are necessary, they should be in front of this Court," and not before a special master.⁹

Discussion

This Court has carefully reviewed all of the parties' submissions from 2009. Based upon that review, this Court finds that the State has not demonstrated to this Court that the State is in full compliance with its constitutional obligations under the Education Clause. This Court finds that the State has not demonstrated that children in chronically underperforming school districts in this state are being accorded a

⁶ *Id.* at 40.

⁷ Plaintiffs' Response to State's Memorandum in Support of Filings Required by the February 4, 2009 Decision at 39.

⁸ *Id.* at 53.

⁹ *Id.* at 49.

"meaningful opportunity to acquire proficiency in the subject areas tested by the State and meaningful exposure to other content areas in the State's education standards."¹⁰

The lack of an aligned curriculum persists in the intervention districts.

The State has been administering statewide assessments of student achievement for over 20 years. Five years ago – in 2005 – the State began administering Standards-Based Assessments (SBAs) in grades three through ten. The SBAs are a comprehensive testing system to assess student proficiency in reading, writing and math, and most recently, in science. The SBAs are fully aligned with the State's instructional content standards in each of those subject areas. The parties in this case have agreed that the State has adopted constitutionally sound instructional content standards and testing criteria.¹¹

This Court's June 2007 Decision held that the State must accord to each child a meaningful opportunity to achieve proficiency in the subject areas tested by the State, and that it had failed to do so in certain chronically underperforming school districts. One critical component that this Court found was lacking at that time was an alignment between the curriculum being taught to the students in certain districts and the State's instructional content standards. This Court first made clear the State's constitutional obligation in this regard nearly three years ago:

If generations of children within a school district are failing to achieve proficiency, if a school or a district has not adopted an appropriate curriculum to teach language arts and math that is aligned to the State's performance standards, if basic learning is not taking place for a

¹⁰ Decision and Order of June 21, 2007 at 194.

¹¹ *Id.* at 27.

substantial majority of school's children, then the Constitution places the obligation upon the Legislature to insure that the State is directing its best efforts to remedy the situation.¹²

To date, the State has not demonstrated that the students in the chronically underperforming school districts in which the State has intervened are being given instruction on the material that is being tested on the State's SBAs. Indeed, in its 2009 filings with this Court, the State acknowledges "at this time, we cannot say that each intervention district has a curriculum fully aligned with the content standards."¹³

The State has elected to place the responsibility for curriculum selection and alignment on each of the underperforming school districts in which it has intervened. The State has concluded that "having each district be responsible for its own alignment is a good thing for education and this is the direction that the Department has chosen to go."¹⁴ The State asserts that having each district develop its own aligned curriculum "is at the heart of the creative, 'brainstorming' process that excites and energizes a teacher" and that if the State were to provide an aligned curriculum to a district it would lead "to a sterile, bureaucratized education program that would increase teacher dissatisfaction and accelerate turnover."¹⁵

The State's delegation of curriculum alignment to chronically underperforming school districts is not constitutionally precluded, so long as the State is making its best efforts to insure that each such district is receiving the support and oversight it needs to

¹² June 2007 Decision and Order at 188.

¹³ State's Memorandum in Support of Filings Required by the February 4, 2009 Decision at 13.

¹⁴ State's Reply in Support of Filings Required by the February 4, 2009 Decision at 41.

¹⁵ *Id.* at 43. *But cf.* June 2007 Decision and Order at 118.

promptly complete this task. But the SBAs have now been administered since 2005, and yet the State has indicated that the curriculum alignment process in the intervention districts is far from complete and that it intends to allow the intervention districts an unspecified amount of additional time "to complete the alignment task in increments and on an expanded timeline."¹⁶

The State's continued delay in achieving curriculum alignment in the chronically underperforming school districts is not constitutionally acceptable. The Plaintiffs have persuasively argued that if each small school district is expected to select its own curriculum and align that curriculum to the State's standards, then there needs to be considerably greater technical support provided to each district to enable that district to promptly complete this task. Further, this Court finds that unless and until a chronically underperforming school district can fully complete those tasks, during the interim the State must immediately provide that district with access to a fully aligned curriculum together with adequate professional training so that that curriculum can effectively be used in the district's classrooms.¹⁷ The materials submitted to this Court in 2009 demonstrate that the intervention districts have been requesting considerably more help from the State in order to fully align their curriculum, but for whatever reason, that additional assistance has not been provided to them. For example, the Lower Yukon School District's draft District Improvement Plan (DIP) for 2009-2010 repeatedly states in bold, "LYSD requests that EED make available to districts a clearinghouse of

¹⁶ *Id.* at 41, n.121.

¹⁷ See June 2007 Decision and Order at 16, ¶22.

resources and instructional practices that are not only research-based but aligned to Grade Level Expectations, as well."¹⁸

In light of the foregoing, this Court finds that the State is failing to meet its constitutional obligation to maintain schools in the chronically underperforming school districts because the State has failed to date to insure that those districts have teachers that are trained to teach a curriculum that is aligned to the State's standards in math, reading, writing and science. As this Court stated in June 2007, the State "must insure that its educational standards are being implemented at the local level so that all children within this state receive their constitutional entitlement to the opportunity for an adequate education."¹⁹ To date, nearly three years later, this has not yet been achieved.

The State's efforts to insure meaningful exposure to the other content standards in the intervention districts has been inadequate.

Each of the many educators who have testified in this case have acknowledged that a student that receives instruction solely in math, reading, writing and science is not receiving an adequate education. To this end, the State developed content standards in several other subject areas apart from those tested on the SBAs, which include geography, government and citizenship, history, skills for a healthy life, arts, technology, employability, library/information literacy and world languages.²⁰ In the June 2007 decision, this Court recognized that to be constitutionally adequate, a public school

¹⁸ Ex. 2609 at 63691, 63693, 63695.

¹⁹ June 2007 Decision and Order at 186.

²⁰ *Id.* at 13.

education should address these other subjects, and held that "the State must insure that each school district has a demonstrated plan to provide children ... meaningful exposure on the remaining content standards."²¹

The State asserts that it has taken appropriate action to address this portion of the June 2007 Decision because it has adopted a draft of standards concerning meaningful exposure to the other content standards and it has informed the intervention districts that they needed to address these other content standards in their DIPs.²²

Although the State has taken some action with respect to this issue, the State has not yet demonstrated adequate compliance with this portion of the Court's June 2007 decision. The State's 2009 submissions to this Court do not demonstrate that each of the intervention school districts has a demonstrated plan to provide children with meaningful exposure to the remaining content standards. With the exception of the draft DIP from Northwest Arctic Borough School District, each of the other plans submitted from the intervention districts falls far short of demonstrating a plan to provide the children within the district with meaningful exposure to the remaining content standards. The draft DIP for Yupiit was left completely blank in the space for the district to describe the means by which it will ensure students receive meaningful exposure to content areas not tested by the State.²³ And the Yukon Flats School District's draft plan

²¹ *Id.* at 189.

²² State's Reply in Support of Filings Required by the February 4, 2009 Decision at 39.

²³ Ex. 2608 at 63757.

simply states that the district action to address the other content standards consists of a "district-wide curriculum cycle" with "instruction and collaborative meetings."²⁴

The State's 2009 briefing asserts that "in the future, the Department will monitor intervention districts regarding meaningful exposure for these content areas."²⁵ To date, the State has drafted standards that define meaningful exposure and it has sent a directive to the intervention districts to include meaningful exposure to the additional content areas in their DIPs. This Court's February 2009 decision required that the State draft 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."²⁶ The State's submissions on this issue since that date are inadequate to demonstrate compliance with this component of that decision. This Court's February 2009 decision can not reasonably be interpreted to require only the drafting of an operational definition of meaningful exposure, together with the provision of a list of resources to school districts for content areas that are not tested by the State.²⁷ Rather, this Court intended by that order that the State direct its best efforts to insure that students in chronically underperforming school districts are actually being accorded meaningful exposure to the State's other instructional content areas.

²⁴ Ex. 2610 at 63419.

²⁵ State's Memorandum at 37.

²⁶ February 2009 Decision at 57-58.

²⁷ See Ex. 2637.

The State's submissions regarding the HSGQE Remediation Plans are inadequate.

The February 2009 Decision directed the State to "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."²⁸ The State's 2009 submissions demonstrate that the State made some effort to address this topic with the intervention districts. See Exhibit 2641 at 63820-63821. But the Department has not demonstrated that it is providing adequate oversight and support to each of the intervention districts on this issue.

The Court does find that the draft DIP submitted from Northwest Arctic Borough School District demonstrates appropriate attention to this issue by that school district. See Ex. 2612 at 63620-63645. But even with that district, the record is silent as to the support and oversight, if any, that the Department is according to that district to insure that the plans the district submitted are being effectively implemented and that the State is providing that district with appropriate technical assistance to that end. In the other four intervention districts, the State has not adequately demonstrated that individual remediation plans are in place for each of the district's students who are not proficient in one or more of the subjects tested on the HSGQE. Indeed, the State's submissions indicate that while each district is expected to develop an individual remediation plan for each student, "details of each plan must be complete, and submitted to EED upon request, before December 15 each year for all students not proficient in all three sections of the fall exam." It is unclear from this language – in which only some of the

²⁸ February 2009 Decision at 58.

plans will be sent to the Department, and then only at the Department's request -- whether the Department has made any effort to actually review the HSGQE remediation plans of the intervention districts. In short, the State has failed to demonstrate that individual remediation plans have been developed for each student who has not achieved proficiency in each of the intervention districts and that those plans are actually being effectively implemented. Given that these districts are in intervention status due to chronic underperformance, the Department must provide considerably more in the way of technical support and guidance to each such district so as to insure that this component of the Court's February 2009 order is fully effectuated. For example, this might include the designation of one or more individuals at EED with the responsibility of overseeing all of the remediation plans in the intervention districts, who would also be available to provide technical assistance and guidance to each of the designated professionals for the students with respect to those remediation plans.

The State has failed to adequately address teacher retention and capacity.

It is undisputed that teacher turnover and teacher capacity are significant problems in the chronically underperforming school districts. Clearly, the constitutional requirement to "maintain a system of public schools" requires that there be a capable teaching staff in those schools. The State's 2009 submissions do not demonstrate that it has adequately addressed this concern.

In this Court's view, it could be very helpful to the intervention districts and the State if the State were to provide the resources to interview each of the teachers in the intervention districts at the end of each school year as to that teacher's reasons for

staying or leaving the district, and also asked each teacher to identify any specific additional resources or support that he or she seeks – be it in the classroom, with housing, with the district office, with EED, or in the community. To be most useful, the intervention districts would be closely involved in both the development of the interview questions and the analysis of the interview results. With this information in hand each year, the State would be in a better position to more effectively assist each of the intervention districts in addressing teacher turnover and teacher capacity in that district.

Further, as noted above, the State needs to insure not only that curriculum materials aligned with the State's standards are available to the teaching staff at each intervention districts, but also that the teachers are provided adequate instructional support and technical assistance so as to insure that that curriculum will actually be effectively taught in the classrooms. The State's 2009 filings indicate that the State has been making efforts to address teacher capacity, through Leadership Institutes as well as with technical assistance coaches, content support specialists, and teacher mentors in the intervention districts. And yet until the State insures that an aligned curriculum is available for all of the teaching staff in the intervention districts to effectively use, it would seem that these other efforts would be considerably less likely to significantly impact student achievement.

The Draft DIPs that were submitted do not comply with this Court's February 2009 Order.

In May 2009, the Department submitted draft DIPs prepared by each of the five intervention districts. As the Department itself acknowledged, "several districts' plans

required considerable additional work.”²⁹ With the exception of the Northwest Arctic Borough School District’s draft DIP, the draft DIPs do not adequately address the concerns identified by this Court in the February 2009 Decision. In short, four of the draft DIPs filed by the Department are not “revised district intervention plans that address and incorporate as appropriate remedial measures related to each of the problem areas identified in these Findings.”³⁰ Considerably more work is needed for these plans to demonstrate compliance with this Court’s February 2009 Order than what was submitted to the Court. Perhaps this work has now been completed, and the Court-ordered plans can be promptly filed. In its May 2009 filing with this Court, the Department indicated that it would be working with the intervention districts “over the next several weeks regarding the content of the final I-DIP’s.” Given that the State has elected to delegate the drafting of the DIPs to each intervention district, it would appear that the intervention districts could each benefit from considerably more technical assistance from the State in completing those plans. As of yet, the State has not demonstrated that the intervention districts each have appropriate DIPs actually in place that address the constitutional deficiencies set forth in this Court’s February 2009 decision.

Conclusion

Based on the current record before this Court, the State has failed to demonstrate that it has complied in full with its constitutional obligation to “maintain a

²⁹ State’s Memorandum in Support of Filings at 7.

³⁰ February 2009 Decision at 58. See *supra* pps. 2-3.

system of public schools open to all children of the State."³¹ The State has not demonstrated that children in the chronically underperforming districts in this state are being accorded a meaningful opportunity to learn the material that is being tested on the State's assessments for reading, writing, math and science. Nor has the State demonstrated that children in those districts are being accorded meaningful exposure to the State's other content standards. And the State has not demonstrated that individual remediation plans are in place in each of the intervention districts to assist each of those students who have not achieved proficiency on the HSGQE. Dismissal of this action at this time is not warranted.

This Court rejects the Plaintiffs' proposal to appoint a special master at this time. The Court remains hopeful that the inadequacies identified in this decision can be promptly remedied by the State without extensive further hearings. However, in the event that these continuing constitutional violations cannot be promptly remedied after this Order, then the Plaintiffs may renew their request for a special master.

In evaluating the State's responses at this time, this Court returns once again to the language of the Alaska Constitution, which places the responsibility "to maintain a system of public schools open to all children of the State" squarely upon the Legislature – not upon the Department of Education and Early Development and not upon local school districts. To date, the State has not demonstrated that the delegation of this responsibility to school districts that have been identified as chronically underperforming, but which do not appear to have been accorded adequate assistance and oversight, will result in compliance with this constitutional responsibility.

³¹ Alaska Constitution, Article VII, Section 1.

In light of the foregoing, IT IS ORDERED as follows:

Within 60 days of the date of this Order's distribution, the State shall file and serve each of the following:

1. A detailed plan as to how an aligned curriculum in each of the SBA-tested subject areas – math, writing, reading, and science – shall be taught in each of the intervention districts beginning in the fall of 2010. This plan will include a provision for adequate professional development to each of the teaching staff with respect to that curriculum.
2. A comprehensive review of the meaningful exposure to each of the other content areas that is currently offered to school children in each of the intervention districts, an identification of any deficiencies in that regard, and a detailed plan for each district as to how to address those deficiencies.
3. Detailed individual remediation plans for each junior and senior high school student in each of the intervention districts who has not yet achieved proficiency on one or more sections of the HSGQE. These plans shall be filed in a manner that protects student confidentiality.
4. District Improvement Plans for each of the intervention districts that adequately address the problem areas identified in this Court's February 2009 decision: curriculum alignment, content areas not covered by the State's standardized testing, ascertainment of the specific strengths and weaknesses of each chronically underperforming district, attention to pre-Kindergarten and other intensive early learning initiatives, and attention to teaching capacity deficiencies.

5. An update on the status of any specific efforts at the Yupiit School District. In its September 2009 filing, the Department indicated its intent to take additional steps to strengthen and expand its intervention in Yupiit.³²

The Plaintiffs are accorded 30 days from the date of the State's submissions within which to file their response.

DATED this 31st day of March, 2010.

Sharon Gleason
SHARON GLEASON
Judge of the Superior Court

County of _____ 3-31-10 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

✓ Bryner
✓ Slotnick
✓ Trickey

³² See State's Supplemental Reply to Plaintiffs' Addendum at 9-10, together with Ex. 2655, a draft Memorandum of Understanding.



Draft Blueprint for Constitutional Compliance:
Moore v. State

Introduction

Judge Gleason's three detailed orders have made clear that children in some of Alaska's schools are not being provided with a constitutionally adequate education. The Court has also made clear that the Alaska Constitution requires the State to provide districts and schools with the assistance and support necessary to provide each child with access to an adequate education.

In its February 2009 Order, the Court found "strong and persuasive evidence" that DEED's response to the crisis in Alaska's chronically low performing schools and districts has ignored both known causes of poor educational performance and known educational solutions to these problems. A full year later, the Court found that DEED is still failing to provide struggling schools and districts with a constitutionally adequate level of support and assistance.

The Court's latest order calls for the State to "promptly" remedy the inadequacies identified and detailed in the February 2009 and March 2010 Orders. The Court also emphasizes that, fundamentally, the constitutional obligation here is an obligation that rests with the Legislature itself. Accordingly, and given the Department's repeated failure to respond to the Court's concerns, the Legislature must take action to remedy the State's significant and ongoing constitutional violations.

Consistent with the testimony and evidence presented to the Court, the Court's findings to date, and widely-accepted research on educational reform and successful interventions for at-risk students, such a response should, at a minimum, address the following:

- Providing targeted educational resources to low performing schools and districts;
- Addressing teacher quality – including recruitment, retention and professional development – in low performing schools and districts;
- Access to high quality pre-kindergarten with parental involvement;
- Ensuring curriculum alignment – including adequate materials, research-based instructional strategies and professional development;
- Building DEED'S capacity to adequately assist and support struggling schools and districts;
- Ensuring community participation and engagement in education reform efforts; and
- Providing meaningful remediation efforts for students in intervention districts and chronically low performing schools who have been unable to pass the HSGQE.



In its February 2009 Order, the Court noted that DEED's interventions to-date had failed to "address teaching capacity due to high turnover, teacher inexperience and unique educational challenges in Alaska's chronically underperforming schools." [2/09 Order, p. 35] The Court described extensive evidence presented on the need to address these issues. [2/09 Order, pp. 35-36] Among other issues, the Court described high rates of teacher turnover in intervention districts, as well as a lack of an existing knowledge base amongst most teachers as to how to address the specific educational needs to students in these districts. [2/09 Order, pp. 35-39] The Court also explained the ongoing problem of attempting to build teacher capacity when such a large portion of a district's teaching staff turns over each year. [2/09 Order, p. 49-40]

In its March 2010 Order, the Court repeatedly notes the need for the State's interventions to include professional development to enable the teaching staff in intervention districts to effectively incorporate and implement the interventions. [See 3/10 Order, p. 7 (State must provide districts "with adequate professional training so that that curriculum can effectively be used in the district's classrooms.")]

As the Court described in the February 2009 Order, witnesses from multiple districts and the State testified about the need for "experienced master teachers and specialists" to provide ongoing, in depth training to teachers in struggling schools. [2/09 Order, pp. 37-40] And the Court quoted both former Commissioner Roger Sampson and current Commissioner Larry LeDoux describing the critical importance of "intensive, well-targeted professional development for teachers." [2/09 Order, pp. 37-38]

Accordingly, the State's plan for constitutional compliance must include a plan to work with intervention districts to provide significant, in-depth professional development, including intensive hands-on support from experienced master teachers, to teachers in those districts.

Also critical to addressing the teacher quality issues raised by the Court is the issue of recruitment and retention of high quality teachers. The Court addressed these issues in depth in its February 2009 Order, finding that DEED had "made no effort to address turnover problems in the intervention districts or to address the need for the considerable additional professional development necessitated by those turnover problems." [2/09 Order, pp. 39, 58] Despite having expressly ordered the State to address these issues, the Court in March 2010 found that "the State has failed to adequately address teacher retention and capacity." [3/10 Order, pp. 12-13]

Given the unquestioned effect of instructional quality on student success, and the significant and pervasive achievement gaps, particularly in remote areas of the State, the State needs to create "meaningful incentives" to allow rural schools to recruit and retain the highest quality teachers. [See 2/09 Order, p. 54] Such incentives could include a loan forgiveness program, or a grants-based program to assist individual districts in addressing specific turnover-related concerns in their district. [3/10 Order, p. 13]



schools – access to high-quality pre-kindergarten improves short-term and long-term academic success, and pays great economic returns.

Given this evidence, the Court criticized the State for failing to “address the significant language development gap known to exist in the intervention districts, despite its well-documented connection to student achievement.” [2/09 Order, p. 35] The Court found that DEED’s interventions in chronically underperforming schools had “accord[ed] 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 school districts.” [2/09 Order, p. 33] Likewise, the Court’s March 2010 Order directed the State to adequately address “attention to pre-kindergarten and other intensive early learning initiatives.” [3/10 Order, p. 16]

In light of the importance of intensive early learning opportunities, the State should make high quality early childhood education available to all students in at least the intervention districts and chronically low performing schools, if not to a wider selection of districts with at-risk students.

While DEED recently implemented a pre-k “pilot program” in a few locations, much more is needed. Given the extent of the available research showing the significant academic benefits of pre-kindergarten, the State should not limit access to high quality pre-K to only a few schools being served by a “pilot.” Likewise, the narrow choice of a “pilot,” which does not even serve all of the schools currently under DEED’s “intervention,” is questionable given that Judge Gleason has now twice found that the State is violating its constitutional obligation to provide meaningful support, assistance and educational resources to chronically underperforming schools and districts.

As a matter of constitutional compliance, the State must consider and address the early learning needs of students in struggling school districts. As a matter of education policy, the achievement gap in Alaska will continue to persist as long as the State continues to ignore the need for high quality pre-kindergarten education with a strong parental involvement component.

4) Ensuring Curriculum Alignment – Including Adequate Materials, Research-Based Instructional Strategies, Support and Professional Development

Judge Gleason has repeatedly criticized the Department for failing to ensure that an aligned curriculum is in place in chronically low performing districts. [6/07 Order, p. 15; 2/09 Order, pp. 28-30; 3/10 Order, pp. 5-8]

After the Court’s 2009 Order expressly criticized the State’s failure to make “any concerted effort to insure that curriculum in each intervention district is aligned with the [GLEs] for the State’s performance standards” (2/09 Order, p. 29), DEED responded by telling the Districts to each undertake the complex and time-consuming task of curriculum alignment. In her most recent order, the Court found DEED’s response “not constitutionally acceptable,” and



6) Ensuring Community Participation and Engagement in Education Reform Efforts

The State's plan for constitutional compliance must include measures reasonably calculated to ensure community participation and engagement in education reform efforts. The February 2009 Order notes the Department's failure to consider or attempt measures "directed at improving student attendance and the school's interface with the local community." [2/09 Order, p. 54]

The State's efforts to comply with the Court's Order must include meaningful efforts to gain community buy-in and engagement in intervention districts and chronically low performing schools.

7) Providing Meaningful Remediation Efforts for Students in Intervention Districts and Chronically Low Performing Schools Who Have Been Unable to Pass the HSGQE

In 2007, the Court held that, where students have not been accorded a meaningful opportunity to achieve academic proficiency, it violated students' due process rights to condition receipt of a high school diploma on passage of the HSGQE. [6/07 Order, pp. 191-195] In its 2009 Order, the Court Ordered the State to develop "a plan of action" addressing whether adequate individualized HSGQE remediation plans were in place and being implemented for intervention district students who had not been able to pass the HSGQE. [2/09 Order, pp. 56, 58] The Court explained that such remediation plans should be individualized to focus on each student's particular areas of deficiency, and should include for each student an assigned professional to monitor the student's progress towards proficiency. [2/09 Order, p. 12]

The Court's 2010 Order finds that the State has still not demonstrated that such plans are in place or that the Department is providing adequate support to intervention districts on this issue. [3/10 Order, pp. 11, 16] The Court stated that "the Department must provide considerably more in the way of technical support and guidance to each such district." [3/10 Order, p. 12]

The State's HSGQE remediation efforts must include **working with intervention districts and other chronically underperforming schools to develop and implement individualized remediation plans** to insure that each student is being provided with a meaningful opportunity to learn the material covered by the test. The State's efforts must include **sufficient assistance, support, educational resources and professional development to insure that such plans are able to be effectively implemented.**

Implementation

Judge Gleason's February 2009 and March 2010 Orders state that time is of the essence in curing the State's ongoing constitutional violations. Additionally, it is the Legislature which is ultimately responsible for curing these violations.



Other Immediate Relief Required by the Court's Order

In addition to the two pieces of legislation already in draft form, the State will need to address as to each intervention district the following specific issues identified in the March 2010 Order:

- Curriculum alignment, including research-based instructional strategies and adequate professional development;
- Meaningful access to the content standards, including individualized assessment of such access in each intervention district, and a plan for ensuring meaningful exposure;
- Individualized inquiry into teacher capacity needs; and
- HSGQE remediation, including technical support and assistance to effectively design and implement intensive individualized remediation plans.

Long-Term Analysis and Strategic Planning

In addition to the foregoing immediate remedial measures necessary to bring the State into basic constitutional compliance, the plaintiffs believe that the long term interests of the state educational system will be best served by the creation of a task force to study and recommend long-term solutions addressing, but not limited to, the following:

- Involvement of the university system to address teacher training and capacity issues;
- Design of long-term strategies for professional development statewide;
- Design of long-term strategies for teacher retention;
- Building and maintaining capacity within DEED;
- Development of professional standards boards and review of teacher certification requirements; and
- State development of research center/clearinghouse on curriculum and instructional strategies for use in Alaska's schools.



**Moore v. State, Core Rulings
June 2007 Order**

Held that the Education Clause of the Alaska Constitution requires the State to:

- (1) **Adopt standards** to define what children should be expected to learn;
- (2) **Establish methods** to assess children's progress in learning;
- (3) **Provide adequate funding** to enable schools to meet the performance standards; and
- (4) **Maintain adequate accountability and oversight** to ensure that local schools comply with the standards set by the State and the Constitution. [p. 174]

Defined a **constitutionally adequate education** as including

- (1) **"A meaningful opportunity to become proficient" in the areas covered by the SBAs, and**
- (2) **"Meaningful access" to areas covered by the State's content standards.** [p. 176]

Held that, "the Plaintiffs have failed to demonstrate that the State is constitutionally obligated to appropriate more money to local school districts at this time." [p. 183]

However, this "conclusion does not imply that spending more money at this time would not have an effect on specific educational outcomes, or for specific schools, classrooms, or students. There may be, in particular, a benefit in **specifically-targeted spending** for incentives for education that **could be beneficial.**" [p. 183]

Also, **"it may be that the Legislature will need to accord to EED additional funding to insure that school districts are meeting the State's duty to provide a constitutionally adequate education to Alaska's school children."** [fn. 42]

Held that the State was failing to provide sufficient support and assistance to chronically underperforming schools and school districts. [p. 184-190]

"There are schools in which children are not being accorded an adequate opportunity to learn the very basic fundamentals as tested by the State." [p. 142]

The State must, at a minimum "... 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." [p. 189]

"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 "that the District's plan is fully implemented and actually in use in the District classrooms." [p. 189]

"Given the state's constitutional shortcomings in addressing the educational needs of children at all schools in the state ... it is fundamentally unfair to those children to condition the receipt of a high school diploma on the [HSGQE] at this time." [p. 193]

The Court stayed its Order for one year to allow the State the first opportunity to remedy these constitutional deficiencies. [p. 191]



- Failing to address teacher inexperience, teacher turnover and “the need for the considerable additional professional development necessitated by those turnover problems” as well as by “the unique educational challenges in Alaska’s chronically underperforming schools.” [pp. 35-40]
 - “The State’s intervention plans assume that the existing staff in chronically underperforming districts already possess adequate instructional experience and knowledge to determine appropriate instruction strategies for all students. But [DEED’s own] instructional audits of these districts demonstrate that is clearly not the case.” [p. 37]

Court: DEED’s interventions ignored **“promising, research-backed remedial measures”** known to address root causes of chronic educational underachievement:

“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.” [p. 54]

“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.”

Additionally: **“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.” [p. 44]**

ORDER: The State was given 60 days to “review, reconsider, and – after consulting with the districts and giving due consideration to their views” – file new district intervention plans addressing and incorporating as appropriate remedial measures related to the interventions’

- Failure to address curriculum alignment [pp. 28-30, 58];
- Failure to address lack of meaningful exposure to content areas not tested on SBAs [pp. 30-31, 58];
- Failure to address the specific strengths and weaknesses of each intervention district [pp. 31-33, 58];
- Failure to address pre-k and other early learning initiatives [pp. 33-35, 58];
- Failure to “address teaching capacity issues caused by high turnover, teacher inexperience and intervention districts’ unique education challenges” [pp. 35-40, 58]; and
- Failure to assess DEED’s own capacity to assist districts [pp. 44-46, 58].



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- The State should “provide the resources” to interview all intervention district teachers at the end of the year as to why they are staying or leaving, “and also asked each teacher to identify any specific or additional resources or support that he or she seeks.” [pp. 12-13]

“The Draft [District Improvement Plans] that were submitted do not comply with this Court’s February 2009 Order.” [pp. 13-14]

- “Given that the State has elected to delegate the drafting of the [improvement plans] to each intervention district, it would appear that the intervention districts could each benefit from considerably more technical assistance from the State in completing those plans.” [p. 14]

“The State has not demonstrated that children in the chronically underperforming districts in this state are being accorded a meaningful opportunity to learn the material that is being tested on the State’s assessments for reading, writing, math and science. Nor has the State demonstrated that children in those districts are being accorded meaningful exposure to the State’s other content standards. ... In the event that these continuing constitutional violations cannot be promptly remedied after this Order, then the Plaintiffs may renew their request for a special master.” [p. 15]

“[T]he Alaska Constitution ... places the responsibility ‘to maintain a system of public schools open to all children of the State’ squarely upon the Legislature – not upon the Department of Education and Early Development and not upon local school districts.”

ORDER: Within **60 days** the State must prepare, file and serve:

1. A **“detailed plan”** as to how an aligned curriculum in each of the SBA-tested areas shall be taught in each of the intervention districts beginning in fall 2010, including “a provision for **adequate professional development** to each of the teaching staff with respect to that curriculum.”
2. A **comprehensive review** of the meaningful exposure to each of the other content areas that is currently in place in each of the districts, identifying any deficiencies and providing “a **detailed plan for each district** as to how to address those deficiencies.”
3. “Detailed **individual remediation plans** for each junior and senior high school student in each of the intervention districts who has not yet achieved proficiency on one or more sections of the HSGQE.”
4. **District improvement plans** for each intervention district that adequately address the following problem areas identified in the February 2009 order:
“Curriculum alignment, content areas not covered by the State’s standardized testing, ascertainment of the specific strengths and weaknesses of each chronically underperforming district, attention to pre-Kindergarten and other intensive learning initiatives, and attention to teaching capacity deficiencies.”
5. An update on the status of any specific efforts in the Yupiit School District.

JOINT RESOLUTION NO. 3

A JOINT RESOLUTION directing the Commissioner of Education to contract with an independent entity to conduct an evaluation of the Department of Education and its oversight capacity.

WHEREAS, During the course of its deliberations, the Joint Legislative Committee on Public School Funding Reform heard testimony regarding the need to ensure that all school districts are in compliance with State statutory and regulatory requirements and that State funds provided to local school districts are being properly expended; and

WHEREAS, The Joint Legislative Committee on Public School Funding Reform expressed a concern that the Department of Education may lack an adequate level of staffing and other resources to fulfill its important oversight responsibilities; and

WHEREAS, There is particular concern about the capacity of the offices of the county superintendents of schools, which have maintained minimal staffing levels despite being assigned an increasing number of oversight responsibilities; and

WHEREAS, These deficiencies seriously undermine the department's ability to hold local school districts accountable and conduct the type of oversight which taxpayers rightfully expect, and to provide the technical and other assistance to school districts that may be necessary to improve and enhance the educational achievement of students; and

WHEREAS, A reorganization of the department may be warranted to better enable the department to identify and correct problems within school districts in a timely and proactive manner; and

WHEREAS, In order to ensure increased school district accountability and enhanced student achievement, an evaluation of the Department of Education should be conducted that will identify measures to improve the capacity of the department to oversee the operation of school districts and to respond immediately and effectively to operational and educational issues which may arise; now, therefore,

BE IT RESOLVED *by the Senate and General Assembly of the State of New Jersey:*

1. a. The Commissioner of Education shall enter into a contract with an independent entity to authorize that entity to conduct a thorough and comprehensive evaluation of the Department of Education in order to identify those organizational and staffing deficiencies that limit the department's ability to provide effective oversight of school districts; and to develop recommendations for the reorganization of the department that will improve the capacity of the department to oversee the operation of school districts and to respond immediately and effectively to operational and educational issues that may arise.

b. The commissioner shall identify existing resources to finance the evaluation required pursuant to subsection a. of this section and shall expend, with the approval of the Office of Management and Budget in the Department of the Treasury, an amount not to exceed \$750,000 for the purpose of that evaluation.

c. The commissioner shall present the evaluation, its recommendations for the reorganization of the department, and the commissioner's response to those recommendations within six months of the effective date of this resolution.

2. This joint resolution shall take effect immediately.

Approved January 29, 2007.