

**ALASKA STATE LEGISLATURE  
LEGISLATIVE BUDGET AND AUDIT COMMITTEE**

Anchorage, Alaska

July 30, 2010

12:08 p.m.

**MEMBERS PRESENT**

Senator Kevin Meyer, Chair  
Senator Charlie Huggins  
Representative Bill Thomas  
Senator Donald Olson (Alternate)  
Representative Chris Tuck (Alternate)

**MEMBERS ABSENT**

Representative Mike Hawker, Vice Chair  
Senator Lyman Hoffman  
Senator Linda Menard  
Senator Bert Stedman  
Representative Mark Neuman  
Representative Bill Stoltze  
Representative Mike Doogan  
Representative Nancy Dahlstrom (Alternate)(Resigned 5/31/10)

**COMMITTEE CALENDAR**

AUDIT REQUESTS

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

REPRESENTATIVE REGGIE JOULE  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified during the Department of Education & Early Childhood Development Moore v. State of Alaska follow-up.

HOWARD S. TRICKEY, Attorney  
Jermain, Dunnagan & Owens, P.C.  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during the Department of Education & Early Childhood Development Moore v. State of Alaska follow-up.

CHERYL MANDALA, Attorney  
Jermain, Dunnagan & Owens, P.C.  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during the Department of Education & Early Childhood Development Moore v. State of Alaska follow-up.

#### **ACTION NARRATIVE**

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**CHAIR KEVIN MEYER** called the Legislative Budget and Audit Committee meeting to order at 12:08 p.m. Senators Meyer, Huggins, and Olson (Alternate), and Representatives Tuck (Alternate) and Thomas (via teleconference) were present at the call to order. Also in attendance was Senator Joe Thomas.

#### **AUDIT REQUESTS**

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CHAIR MEYER announced that the only order of business was the Department of Education & Early Childhood Development Moore v. State of Alaska follow-up.

CHAIR MEYER reminded the committee that the Bush Caucus had requested an audit of the Department of Education & Early Childhood Development's role and activities pertaining to the Moore v. State of Alaska case and the three court orders issued by Judge Gleason of the Alaska Superior Court. Today's meeting is a follow-up on that issue. He said Representative Reggie Joule is the chair of the Bush Caucus and was the person who made the initial request of the Joint Legislative Budget & Audit Committee.

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REPRESENTATIVE REGGIE JOULE, Alaska State Legislature, said the Moore v. State of Alaska case has been going on since 2004. He indicated that the inability to find some sort of settlement regarding this case is the reason that the Bush Caucus was initiated, as well as the reason that caucus made the request of the department. He said the goal of the audit was to focus on

three areas: to determine the effectiveness of the measures taken as a result of the case; to identify ways in which the department could more effectively support school districts across the state in their capacity to create educational systems consistent with the judge's March 2010 order; and to research the cost and implementation of the process for pre-kindergarten ("pre-K") programming in targeted districts, as identified in the lawsuit.

REPRESENTATIVE JOULE reviewed that during the last legislative session, the legislature appropriated \$7 million to deal with this issue. He stated that education is probably one of the more important issues to address that can have a long-term benefit to the state. He said he is not certain that the request for an audit is "where we need to be any more." He said the audit is narrow in focus. He opined that it is important for the legislature to know that the efforts of the department are in the best interest of the children's educations.

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REPRESENTATIVE JOULE reported that approximately half of the state's school districts are performing below the seventieth percentile, which he said is alarming. He said it is a given fact that there will be exceptions in rural schools, where there is a higher teacher turnover and not enough teachers to teach a range of issues necessary for a quality education. He indicated that the judge has said [the responsibility for the performance of the school districts] falls upon the legislature. He recollected that the department has said it represents the legislature, but he said he takes issue with that, because he thinks the department represents itself. The legislature sets policy, he said, and he suggested the legislature should focus on what it can be doing to ensure quality of education to those students who are part of the districts falling below the mark. Representative Joule stated that there is a good chance this case may get settled out of court, but he does not think the actions of the legislature should be mollified in that instance.

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REPRESENTATIVE JOULE indicated popular belief used to be that it takes a long time to effect change for students; however, efforts have been made that have shown changes can take place in shorter periods of time when the key issues are pinpointed. He suggested it may be appropriate "when you do have the numbers and the people" to "refocus this request into looking at a

broader spectrum of our education system." He said many of his colleagues get frustrated when the legislature puts money into the education system and they do not see a change in the results. He said that in some cases money has not been the answer.

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SENATOR HUGGINS said early this morning President Barack Obama made a speech about "Race to the Top" in charter schools. He recollected that two states received money "in the first round," and 16-18 states received money "in the second round" - the total states involved being less than half the states in the Union. He questioned where Alaska fits in the process and whether the state is satisfied with its achievement level. He said Moore v. State of Alaska is just "a microcosm of a bigger challenge" faced by Alaska. He stated, "Statistically, we have a steep incline that we've got to approach." Senator Huggins said he concurs with Representative Joule regarding this issue.

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REPRESENTATIVE JOULE stated that the Legislative Budget and Audit Committee has the authority to "get contracts out and get things moving." If the committee chooses to do nothing, that will mean delaying action until the next legislative session. He said he does not think it is necessary to wait to have someone bring forth options. Representative Joule said education and the children in it are big business, worth a lot of money, especially to the education system. He urged the committee not to wait until next year to take action.

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REPRESENTATIVE TUCK pointed out that the Anchorage School District has hired outsiders to audit its program to find out what may need to be done. The Greater Council of Schools is one such third party entity. Representative Tuck said he is not sure whether the Department of Law (DOL) or [Legislative Legal and Research Services] represents [the legislature]. He added, "Because we do not ... select the Department of Law, but I think that we do have that authority over our Legislative Council." He said the question before the committee is whether it wants to pursue an audit or continue listening in on the Moore v. State of Alaska case. He indicated a need to determine whether or not what [the legislature] is doing now is effective and is enough, and to determine whether or not the Department of Education &

Early Childhood Development has all the tools that it needs. He said the issue has become emotional, it has become "us versus them," and he suggested that having a third party give its recommendation would help the legislature have a clear view of what needs to be done.

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CHAIR MEYER noted that progress has been made since the committee's last meeting. For instance, a consultant has been hired who is an expert in the field and came from the Dutch Harbor area. The expert was hired by the administration to work with those districts that need the extra help. He asked Representative Joule if he thinks that has been a positive step.

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REPRESENTATIVE JOULE said he knows the individual that was hired, because in the past the man served as the assistant superintendent for the same school district for which Representative Joule served as a school board member. He stated, "I think that the department has hired a very capable, fair-minded individual who'll probably be able to bridge a lot of the areas that need work." He said the man is a good administrator, has a lot of rural experience, and keeps the best interests of the children foremost in his mind.

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HOWARD S. TRICKEY, Attorney, Jermain, Dunnagan & Owens, P.C., said he would answer questions regarding the Moore v. State of Alaska case and offer the firm's perspective on court rulings on the case. He said since the original order, the court proceedings have focused on the classroom and what is needed to improve instruction in schools to "close the achievement gap." He stated that despite what committee members may have heard about Presiding Judge Sharon L. Gleason, she has focused the case on the classroom and on "what research-based, evidence-based, targeted resources in education make a difference in improving student achievement."

MR. TRICKEY said one of the principle conflicts the plaintiff has with the Department of Education & Early Childhood Development (DEECD) is that much of what the department is doing is a stop-gap kind of measure that does not address the underlying, root causes of the struggles in some school

districts. He emphasized the diversity of Alaska students in terms of socio/economic, linguistic, and cultural backgrounds.

MR. TRICKEY stated that for the first time in Alaska's history, the court has issued a core ruling that addresses what the scope of the legislature's duty is under the constitution to establish a system of schools open to all children in the state. Subsequent court orders have developed what Mr. Trickey said he calls a blueprint for compliance with the constitution. He noted that in the committee packet is a summary from the firm called, "A Blueprint for Constitutional Compliance." He said the firm has tried to adhere to the language of the court's orders in this handout, rather than putting its own "spin" on it. He explained that it is in the two subsequent orders that the court has focused on causes of chronically low-performing schools and causes of why children don't succeed, and what research and evidence shows to be the remedies. He said if he were a policy maker, he would want to know not only how to address the problem, but also to know how to most effectively use state resources to greatest impact.

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MR. TRICKEY reviewed Judge Gleason's 2007 court order, which he said provides the constitutional framework "for where it is we are today." In that order, Judge Gleason maintained that the obligation of the legislature to establish a system is grounded on four pillars: the state must adopt standards to define what children need in order to learn to be successful citizens; the state must establish methods to assess children's progress in learning; the state must provide adequate funding to enable schools to meet the performance standard; and the state must maintain adequate accountability and oversight to ensure that local school districts comply with the standards and the requirements of the constitution. Mr. Trickey continued as follows:

Where we seem to most frequently disagree with the Department of Education [& Early Childhood Development] at this juncture is that the court's subsequent decision has ... targeted educational resources that can remedy some of the issues that are the underlying causes of students' low performance and low performing schools, ... and the state doesn't want to embrace what those targeted resources are from our perspective.

MR. TRICKEY relayed that there have been settlement discussions over the summer, but the case is currently at an impasse, and he does not foresee a settlement. He said, "We'll go back to Judge Gleason for another decision sometime this fall."

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MR. TRICKEY, regarding targeted resources, related that in its original 2007 decision, the court found that the state system at the time, overall, was adequately funded. He indicated that the judge had stated that she had not meant to imply the following:

... that spending more money at this time would not have an effect on specific educational outcomes or specific schools, classrooms, or students. There may be in particular a benefit in specifically targeted spending for incentives for education that could be beneficial. It may be that the legislature will need to ... deed additional funding to ensure that school districts are meeting the state's duty to comply with the constitution.

MR. TRICKEY said he read that quote to explain that additional resources were authorized by the court, and he said [the firm's] experience thus far is that [the department] does not want to "embrace that." He clarified that he is not proposing that the state "throw money at the problem." He said, "We will identify the specific types of research-based remedies that the court has endorsed in [its] subsequent opinion." He said the court also has found that all children have the right to "a meaningful opportunity to become proficient in the areas covered by the standard state assessments, which are reading, writing, mathematics, and science ...." Children also have a right to "meaningful access and exposure to the area covered by the remaining state content standards," which include, among other areas, government, geography, and art, he said.

MR. TRICKEY stated that in 2007, the court found that the constitutional violation was that the state was not providing sufficient technical support and assistance to build local school district capacity to ensure that all students were getting the meaningful opportunity to become proficient and have meaningful exposure to the content standards. The court ruled that at a minimum, the state must provide considerably more "assistance, technical resources, and support to build local district capacity, in a concerted effort with local school districts to identify the strengths and weaknesses of particular

local districts to identify what resources would be helpful and do so making its best effort." Mr. Trickey reviewed that the court gave the state a year to comply with the constitutional obligation. The department, even after the court order was entered in 2007, maintained that it was already in compliance with the constitution, and it filed pleadings with the court to that effect. The court determined that the department had not already met that compliance.

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MR. TRICKEY said another two-week trial took place in the fall of 2008, at which time the focus of the case turned to the classroom. The court found that the root cause of chronically low-performing schools is that children come to school not ready to read and learn; the children do not have the language development skills necessary. Findings show that a child who has not met proficiency levels in reading and writing by third grade has less than 50 percent chance of successfully completing high school. The other issue is a lack of teaching capacity. He explained that it is difficult for many of Alaska's small school districts to recruit and retain highly qualified and effective teachers. He said teachers in those areas often don't have the training to address the early language development issues with which they are faced. Mr. Trickey said that problem reflects in the scores of the school district's students, but it is not the school district that trains teachers - it is the university system that sets the qualifications for training. He spoke of creating "a pipeline of highly qualified, highly effective teachers." He said in that regard, this case is broader than Representative Joule has alluded to in his comments about the school districts and the department.

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MR. TRICKEY addressed court findings made in February 2009, which were reiterated in March 2010. He said the judge found the following:

The parties do not dispute that the intervention districts face significant hurdles in attempting to correct their students' underperformance, including geographic, culture, environmental, and other influences, but the evidence was also established that there is a promising array of research-backed remedial measures to address the educational needs of students in these districts, which have not been successfully

implemented and have not been considered by the department. Such measures include efforts to build in-house expertise, to increase the availability of teacher capacity to create meaningful incentives to promote the recruitment and the 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 district. 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....

MR. TRICKEY related that much of the judge's findings used in her decision came from the testimony of Dr. Linda Darling-Hammond, a professor at Stanford University Center for Education and Research who is well published and is the past director of the National Teacher Quality Movement. He offered further information regarding Dr. Darling Hammond, concluding that the woman is highly regarded.

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MR. TRICKEY said one of the other findings made by the court was that the state had justified not addressing pre-K in any respect in the intervention districts because of comments [the judge] made in her 2007 order and decision. He said the judge clarified her 2007 decision, and she ruled:

The state has categorically declined to consider an early education component such as pre-K in its intervention. In ruling out this option, the state has relied on the court's holding that the education clause does not require pre-K to be included as an integral part of the system of public education.

MR. TRICKEY said in the prior case there had been a discussion and testimony about universal pre-K required on a statewide basis, but the judge said that ruling was not intended to "exempt pre-K from being considered and used as a case-specific measure to remedy the constitutional violation." In 2009 and again in 2010, the court reiterated the importance of considering pre-K in the intervention district to provide a type of pre-K that is academically oriented, so that children develop the cognitive and linguistic skills needed to enter school successfully.

MR. TRICKEY relayed that the court made other specific findings that constant teacher turnover in rural districts undermines the types of investment that those districts can make. He explained that the constant turnover of staff adversely affects efforts in working with students acquiring English as a second language and becoming familiar with what cultural enrichment in the curriculum is necessary to engage the student. Mr. Trickey said the court was disturbed by the constant turnover and specifically found that that issue is not a school district problem, but rather is the responsibility of the state to provide an adequate, stable supply of teachers able to deal with "the environment in which they teach and the complexity of the challenges they face." Mr. Trickey said research shows that a highly qualified teacher in the classroom can neutralize many of the effects of the disadvantages of children. He noted that the court also addressed specific issues such as curriculum alignment and other technical points.

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MR. TRICKEY urged the committee to carefully consider pre-K when considering education issues. He suggested, "The court decision ... could even serve as a catalyst for that, as a remedy in this case." He related that a Nobel Prize-winning economist at the University of Chicago, using all the tools available to economists in analyzing social and economic data, has concluded that for every dollar invested in pre-K, there is "a return to society in the education of \$7." He said Pre-K: increases high school graduation rates, elevates children's performances on standardized tests, reduces grade repetition, reduces the number of children that end up in special education, reduces crime and delinquency, lowers teen pregnancy rates, and results in producing adults with greater economic and vocational opportunities. Mr. Trickey relayed that some studies show that the positive effects of pre-K are diminished without the influence of highly effective teachers.

MR. TRICKEY reiterated his previous comments regarding the importance of recruiting and retaining quality teachers. He said teachers stay in districts where they feel they have a positive effect and the support of the district. He said research shows that teachers need four to five years of experience before they get really good. Too many times districts have to hire first-year teachers, often from outside of Alaska. He encouraged the legislature to show its support for quality teachers through a resolution. He said that the

firm intends to work on legislation, which it hopes to circulate well before the next legislative session.

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MR. TRICKEY, regarding the specific issue of the audit, said the court described the state's interventions as "a minimalist first-step approach." He said experts testifying on behalf of the state have said interventions "can only be as successful as they are supported." It has been recommended that the department conduct an audit of its own capacity. He concurred with Representative Joule that the issue is much broader than that, but said this is a starting point.

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CHERYL MANDALA, Attorney, Jermain, Dunnagan & Owens, P.C., stated that the audit is not about Moore v. State of Alaska, nor is it about what the court has found specific to the districts or litigation. The idea of an audit came up in the context of the court's decision. She relayed that during the 2008 trial, testimony was heard from both the plaintiff's expert and the state's expert regarding state department capacity. She explained that an intervention to turn around low performing schools will only be successful if the appropriate tools are available to the intervening party. Ms. Mandala mentioned a management consultant company working with the Department of Education & Early Childhood Development to help the department figure out the overall needs of the state, the capacity level of the department, and the needs of the districts, and then put together a critical organizational audit outlining what steps need to be taken to turn the department around. She relayed that Dr. Darling Hammond has emphasized the importance of state capacity in improving low-performing schools. She discussed the importance of the department's ability to carry out its role rather than having individual districts take on the task.

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MS. MANDALA said in her 2009 order, the judge found that the state's interventions, to date, were minimal and not targeted to the root causes of chronic underperformance in the school districts. She said the judge further found that one of the key problems appears to be "the department's failure to accept its own capacity to intervene." She indicated that in 2009 there had been a lot of testimony from school districts, not questioning the good will of those in the department, but

questioning the capacity of the department to address the root causes of the problem. The resulting court order was that the capacity of the department to effectively intervene in these districts needs to be addressed.

MS. MANDALA, regarding Representative Joule's comments, said she thinks an audit like that does not have to be limited to the issues in the court's order. She restated Representative Tuck's previous comments regarding the availability of consultants who are experts in education policy and education reform and can help states figure out what the root problems in their schools are and how those problems can be fixed.

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MR. TRICKEY said he thinks the people in the school districts and in the department are well-intentioned, but root causes of failure, as identified by the court, can be present irrespective of people's good will. The court ordered that the department, state, and local districts together use their best efforts to address those problems. He said it is the firm's view that the reason the case is still at an impasse is because of the department's unwillingness to adopt the kind of targeted resources and assistance the court has recognized as instrumental in closing the achievement gap and creating a model for successful school improvement.

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CHAIR MEYER asked the testifiers to bring the committee up to date regarding upcoming court proceedings.

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MR. TRICKEY said the settlement discussions, which took place in June, were unsuccessful. He said in the March order, the judge gave the state 60 days within which to comply with five specific directives. Mr. Trickey said the fourth directive incorporates most of the issues he addressed today before the committee. No other settlement discussions are currently scheduled. He said the firm has asked the court to lift the stay, and expects that the court will do so, because "it was only entered into for as long as parties thought they were making progress toward settlement discussion." Mr. Trickey said he does not believe settlement is likely. He said the judge will give the state between 30-60 days to comply with her order. He said the state will file to show that it believes it is in compliance with the

constitution, at which point the firm will be given 30 days to oppose that. The court will then decide whether or not the state has taken sufficient steps to comply with the constitution. Mr. Trickey opined that the judge has been fairly prompt in rendering her decisions, given the complexity and amount of information with which she has been presented. He predicted that the final court decision would be made in the fall of 2010.

MR. TRICKEY, in response to Chair Meyer, said the state has indicated that certain subjects are not "on the table for discussion." He said those are items that the firm thinks are critically important in resolving the dispute. He said the department will not get involved in matters it considers require legislative action, and the department has characterized pre-K as a matter for the legislature. Mr. Trickey said the firm believes that any resolution of the case will require cooperative settlement discussion involving both the executive and legislative branches of Alaska. He related that when the settlement discussions in June were scheduled, the facilitators suggested that the legislature participate, and although the firm did not object, the department did object. He said the policy perspective of the legislature could very well be different from that of the department and executive branch regarding some of these issues. Mr. Trickey continued:

So, we keep being stymied by that, Senator Meyer, that some issues that we think are critical to ... any resolution that will really address the underlying cause of the ... achievement gap and low performing schools have to engage the legislature. And we see the court's decision as a catalyst for that to occur and we can't reach agreement with the Department of Law and the Department of Education [& Early Childhood Development] on that.

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CHAIR MEYER noted that Mr. Trickey had mentioned the administration. He said the law suit is against the State of Alaska, and he asked Mr. Trickey to clarify if that means the Department of Education & Early Childhood Development, the Alaska State Legislature, or "all of us."

MR. TRICKEY answered that it is really both the administration and the legislature. He stated, "The court's decision has clearly said the responsibility is not in the legislature, but

the constitutional duty and obligation is the legislature's obligation." He said the legislature is the law-making, policy-making body that has the power and authority to appropriate funds; however, the executive branch executes those policies on behalf of the legislature.

MR. TRICKEY stated that the policy choices of the executive branch may be different from those the legislative body would make.

CHAIR MEYER said the state has made progress in the pre-K area, with Head Start and Best Beginnings. He said if the legislature wanted to give more money to the districts that needed more intervention, but the executive branch vetoed that action, the legislature could not sue the executive branch.

MR. TRICKEY said there is a case in the state of New Jersey called Abbott v. Burke, which has continued for 12 years, and is related to the issue to which Chair Meyer referred, where the legislature does something with which the administration does not agree. He said the courts give more and more directive regarding what is required by both the legislative and executive branches of the state to comply with the state's constitution. Mr. Trickey opined that Judge Gleason has been appropriately deferential to the Alaska State Legislature as having the first opportunity to address the educational policy issues and to the Department of Education & Childhood Development as being the entity to address the educational policy issues within the framework of the constitutional rights of children.

MR. TRICKEY said in the last round of briefing, the firm asked Judge Gleason to appoint a "special master" to advise what specific orders she could implement. He said Judge Gleason declined to do so, but in her March order she said "Finance" could request that if necessary. Mr. Trickey emphasized his sincerity when saying this case is a catalyst for the legislative and executive branches to work together to comply with the constitution. He said the problem Chair Meyer posed is a constitutional crisis requiring court intervention. He said society works because of the rule of law. He stated, "This body and the executive [body] would respect the decision of the judicial branch, just as the judicial branch should respect the legislative functions of this body of government."

CHAIR MEYER, regarding the case in New Jersey, remarked that no one wins in a case that is tied up in court for 12 years, especially the children.

MR. TRICKEY noted that over the course of those 12 years, the court in New Jersey has ordered increases in funding in education, changes in educational programming, changes in teacher quality, and pre-K. He said it would be better to settle Alaska's issues without legislation, but he said litigation can effect beneficial changes.

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CHAIR MEYER asked Mr. Trickey if he thinks the state should take over school districts that do not use the money given to them for the purpose intended. He suggested that doing so would create chaos.

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MR. TRICKEY responded that a state threat to take over local school districts does not foster a good working relationship. He stated, "That has been insinuated into the conversation for several years now and has not been ... a productive part of it." Notwithstanding that, he said local districts operate under state guidelines. The state keeps a detailed chart of accounts and requires the expenditure of funds in accordance to that chart, and requires a certain percentage of a school district's budget to be spent on direct instruction. Districts either meet that requirement or ask for a waiver from the department. He said there is not a single school district involved in the court case that has been identified as not having met the state's current requirements for spending funds on instruction.

MR. TRICKEY said the firm's clients do not disagree with the notion that they should be held accountable for how they spend their funding. The issue, he said, is whether "any of that" is addressing the underlying causes of chronic [low] school performance and whether or not the department is really the right entity to figure that out. He said this goes back to the issue of department capacity. Mr. Trickey said the intervention has required districts to spend money in ways that are not addressing underlying causes. Finally, he indicated that [school districts] are not currently being funded to provide pre-K, which is a critical, underlying cause of why children start school behind and do not catch up.

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REPRESENTATIVE JOULE said Mr. Trickey focused on two issues: pre-K and capacity. He said pre-K is a big enough budgetary issue to become the realm of the legislature. He said although he supports pre-K, he is not sure a court mandated pre-K will produce the best result. He asked if data is available that shows that the pre-K that is happening around the state is making a difference. Regarding capacity, he said while the legislature has funded "the formula," its support of the department, which is separate from the funding that goes out to the school districts, may be lacking. He said he has heard from the department that it knows what some of the remedies are, but that it currently is not going to ask for the necessary funds. He said he finds that worrisome. He stated, "... If that gets to the issue of capacity, and we are not able to provide in the areas of support that some of our districts may need ..., then that's a little concerning, and I don't know that I'd want the department to be self-assessing those areas."

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REPRESENTATIVE JOULE said he thinks when Mr. Trickey spoke of how much money is spent, he was referring to a 70/30 formula.

MR. TRICKEY confirmed that is correct.

REPRESENTATIVE JOULE said that [formula] was an outcome of Senate Bill 36, in 1998, and he suggested "maybe that thing has run its course."

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MR. TRICKEY said the pre-K standard is for children three and four years of age, and currently there is no academic quality pre-K for three- and four-year-olds that is being offered in any of the intervention districts.

REPRESENTATIVE JOULE clarified that the state is not funding three- and four-year-olds; some of the districts are.

MR. TRICKEY offered his understanding that some school districts are providing a pre-K program for four-year-olds, mostly through federal funding sources. He said he has heard anecdotally that those children in pre-K do better in school. He said those students have been "tracked," but he said he cannot say whether there is scientific evidence to support this finding observed by the teachers. He noted that the districts that offer this program are not always able to offer it in every school in every

village. He said Head Start is not an academic pre-K program. He related that many communities have Head Start, and he suggested the state might consider "working with" and "building on what's there."

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MS. MANDALA emphasized that the nationwide research regarding pre-K has shown the benefits of high-quality, academic, language-rich pre-K programs, which is what districts would like to offer. However, a lot of school districts are able to offer, for example, only part-time pre-K for four-year-olds in some of their villages, taught by an aide with an associate's degree. She said that is not the high-quality pre-K that works.

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MR. TRICKEY stated that the department has, in the recent years, become a monitoring and compliance agency, and has not excelled in the area of instructional capacity support, which is what the court has ordered the state to do. He said the department is not an agency that has "the depth of content specialists, mentors, and others that could work with the local districts in compliance with the order."

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REPRESENTATIVE JOULE indicated that this year's budget included money for department personnel with expertise in certain backgrounds, in an effort to rebuild capacity. He said he thinks over time the legislature, as an appropriating body, may have taken some capacity away from the department as a result of being financially frugal. He said he thinks the legislature has recognized this and has begun to "rebuild in those areas."

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CHAIR MEYER mentioned experts in the field of Math, Science, and Reading or English. He invited Mr. Trickey to comment regarding the latest intervention the administration has made by hiring consultants to work with at least one of the school districts. He stated, "These seem like positive steps based on the concerns that you said that you had."

MR. TRICKEY said a consultant has just been appointed by the department as an "instructional trustee" to oversee and provide guidance to the district related to the instructional program.

He said the court order to appoint that trustee gave the district 30 days in which to file comments on the order, which the district has done. The state may modify the order or "leave it in place as proposed." He related that there has been an initial meeting between the trustee and the school district administrative staff, and a school board meeting will take place in the next couple weeks. Mr. Trickey said he is not sure that this stop-gap measure - bringing in someone to review the instructional program - addresses what the court has identified as the underlying causes of why children are not successful in that district and why their scores have been low.

CHAIR MEYER agreed that this seems like a stop-gap measure rather than a long-term solution.

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SENATOR HUGGINS commented on Alaska's low graduation rate and expressed concern that what is being discussed and proposed is just "salve on a sucking chest wound." He said the new president in the University of Alaska system has remarked that a significant number of students entering university have high grade point averages (GPAs), but the university is still doing remedial training, and at some point in time the system needs to be reviewed to figure out why the university has to do remedial training and how to change that.

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MR. TRICKEY expressed appreciation for Senator Huggins' comments and said he does not disagree with a single thing he said. He said he thinks the judge has addressed many of the systemic issues related to educational achievement, which present a challenge to the state.

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REPRESENTATIVE THOMAS said the committee has heard sometimes conflicting testimony from parties on both sides of the issue, and he recommended that the committee hear testimony from the legislature's attorney before creating legislation to address this issue.

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CHAIR MEYER agreed that it is time to bring in counsel from Legislative Legal and Research Services. He related that the

committee has received a request from the Bush Caucus for an audit to be done. He expressed concern about getting the legislature's attorneys involved in an ongoing case. He reiterated that it is confusing that the legislature is part of the State of Alaska, which is the entity being sued in Moore v. State of Alaska. He suggested that Tamara Cook, the director of Legislative Legal and Research Services, could be invited to the next meeting.

REPRESENTATIVE JOULE said, "Our request was fairly narrow as it relates to the Moore case." He expressed concern about addressing this issue in a timely manner, and indicated that some action could be taken at the next Legislative Budget and Audit Committee if a quorum is present at that time.

CHAIR MEYER stated that it was not his intent to take any action today.

REPRESENTATIVE JOULE questioned how much longer the legislature can afford to wait.

CHAIR MEYER reiterated his intent, and clarified that today's meeting was specifically planned in order to hear testimony from the plaintiff.

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SENATOR OLSON recollected that the committee had, at a previous hearing, heard complaints from the Department of Law and the Department of Education & Early Childhood Development regarding "some of the issues that were presented to them as conditions for them to go ahead and settle this case - [issues] that had nothing to do with the case at hand." He said Representative Joule had brought up the issue of early childhood education, which is "a broader look." He questioned how the impasse can be resolved "by not allowing the defendants to ... put these arguments in front of us." He opined that the plaintiffs are being unreasonable in bringing up issues they want addressed that are not part of the case. He asked Mr. Trickey if these issues were brought up from a legal standpoint or if they were "something that came from the rest of the plaintiffs that were unnamed."

MR. TRICKEY said he does not want to be nonresponsive to Senator Olson's questions; however, he explained he does not want to get into negotiating with the state through the committee today. He stated the firm's belief that the judge clearly indicated that

for the intervention district, the state needs to make a concerted effort with local districts to remedy the underlying causes of low student achievement. He said the superintendent of Sitka testified that he does not think it is appropriate to expect children to "achieve more than one year's worth of academic growth." That witness testified that pre-K is an issue that the state needs to address in the intervention districts, and the court endorsed that. Mr. Trickey said the state has refused to consider that issue, but the firm believes that it is a critical component of a settlement, and it will require legislative action.

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SENATOR OLSON remarked that it looks like the plaintiff is starting to "bark up the tree of social engineering" by dealing with issues outside of that which is addressed in the classroom.

MR. TRICKEY responded that the state made an argument to the court that there is a misalignment between the communities and the schools - that the communities and parents do not support their children's education. He related that the court had said that is not a constitutional excuse and that pre-K is a way to address the issue of children starting school behind in learning. He recognized that the term "social engineering" is politically charged, and he further recognized that people have varying opinions regarding pre-K. However, he said, "We're talking about pre-K as a remedy to resolve this case for these intervention districts." He indicated that there is no intention of making pre-K mandatory in every community in Alaska, only in those areas where the courts have found chronically low-performing schools for many generations.

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REPRESENTATIVE TUCK expressed appreciation for the discussion today regarding the role of the state through the administration and the executive branch. He said the issue that needs to be addressed is system capacity. He opined that sometimes good legislation is passed based on reaction, but sometimes the best legislation is passed by being proactive. He said third grade is a pivotal point; it is difficult to remediate children once they get to that grade level. He related that the early learning years are when children absorb so much. Representative Tuck imparted that when he served on a school board, he was shocked to learn that prison systems determine the amount of bed space they will need in the future based upon the literacy

scales of third graders. He indicated that literacy levels determine other factors of students' futures, such as high school graduation rates, earning potential, and divorce rates.

REPRESENTATIVE TUCK, regarding Moore v. State of Alaska, said he appreciates the prior comments of Representative Joule regarding the proficiency rate in Alaska's schools. He expressed appreciation for Senator Huggins' previous comment that this is a critical time to act. He expressed his hope that there will be a quorum at the next meeting, and he questioned how critical timing is in regard to decisions being made by the committee during the interim.

REPRESENTATIVE TUCK said stop-gap procedures and remediation of students are more reactive than proactive, and he opined that the state needs to begin educating its children earlier. He said he thinks every [legislator] present had some role to play regarding the pre-K bill that was heard in the last legislative session, and that everyone is in agreement regarding the importance of having pre-K. The issue is how to best institute it, he remarked.

REPRESENTATIVE TUCK said he knows that there have been federally funded programs throughout the state. He indicated that the Parents as Teachers (PAT) program is in 47 communities. He said the City of Hoonah has a 70-80 percent participation rate, whereas the City of Angoon has "a zero percent proficiency." He opined that parents are ultimately responsibility for the education of their children, and he said one factor in the success of children is parental involvement.

REPRESENTATIVE TUCK said when he served on a school board, one of the exercises done was "the ABCs," which stands for acknowledgment, belief, and commitment. For example, the board acknowledged its low graduation rate, and recognized one belief is that it takes a village to raise a child. He posited that community involvement does have a role in education.

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CHAIR MEYER announced that the next Legislative Budget and Audit Committee meeting would be on August 20, 2010.

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**ADJOURNMENT**

There being no further business before the committee, the Joint Legislative Budget & Audit Committee meeting was adjourned at 2:04 p.m.