

**4/9/10**  
**MOORE**  
**V.**  
**STATE**



**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; *5 million / End of childhood*
- Addressing teacher quality - including recruitment, retention and professional development - in low performing schools and districts; *1 - Regent*
- Access to high quality pre-kindergarten with parental involvement; *5 million*
- Ensuring curriculum alignment - including adequate materials, research-based instructional strategies and professional development; *P. 1st page*
- Building DEED'S capacity to adequately assist and support struggling schools and districts; *HB 147*
- 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. *repl*



## Components for Constitutional Compliance

### 1) Provision of Targeted Educational Resources to Schools/Districts

Among the “array of promising, research-backed remedial measures to address the educational needs of students in these districts,” the Court’s February 2009 Order identified the provision of “targeted educational resources” to intervention districts. [2/09 Order, pp. 53-54]

Considerable evidence has been presented to the Court on specific, targeted resources necessary for chronically low performing schools and districts to meet the unique needs of students in those districts. These could include access to resources for specialized professional development, specialized curriculum for particular high-needs students (for example, students whose first language is not English), access to experienced and knowledgeable teaching mentors, content specialists, language development specialists, or social services. Additionally, the availability of targeted educational resources could assist intervention districts and low performing schools in ensuring that students in those districts receive the constitutionally required “meaningful exposure” to the areas covered by the State’s content standards.

**The State’s efforts at constitutional compliance should include a mechanism to make targeted educational resources available to intervention districts and low performing schools. Because instructional methodology, community engagement and adequate social services have all been repeatedly identified as key to improving student achievement of at-risk students, plaintiffs recommend and support a formula-based program to provide schools and/or districts with targeted resources in these areas.**

### 2) Addressing Teacher Quality – Including Recruitment, Professional Development, and Retention – in Struggling Schools and Districts

In order to meet its constitutional obligation, the State needs to provide sustained, high quality, relevant professional development to teachers in high needs schools and districts. Current teacher training programs do not adequately prepare teachers for the instructional challenges of teaching in remote areas of Alaska or in chronically low performing schools. Nor are today’s teachers sufficiently prepared to implement intensive intervention strategies without significant additional training. If instructionally-focused interventions are to be successful in these districts, the State must provide teachers with the intensive training and ongoing professional development necessary to participate meaningfully in those interventions.

The importance of strong teachers is particularly vital in chronically struggling schools and districts, and for at-risk students. During the 2008 remedy phase hearing, education reform expert Dr. Linda Darling-Hammond described research showing that the combined effect of teacher characteristics, such as their qualifications, certifications and training, “more than offset the effects of race and socioeconomic status on students’ achievement at the school level.” This research shows that teacher qualifications and training “can compensate for” these other factors outside of schools’ control and can “provide the instructional supports that can help schools be much more powerful in their effects on student achievement.” [10/9/08 hearing testimony, p. 71]



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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]



**The State's plan for constitutional compliance must include the direction of support and resources to issues of teacher retention. The State should collaborate with intervention districts in an individualized study of recruitment and retention needs, and should develop a plan to address those needs on an effective, individualized basis.**

**3) Access to High Quality Pre-Kindergarten with Parent Involvement**

The Court has repeatedly criticized DEED for its refusal to consider and address "intensive early learning initiatives" as part of its interventions in chronically underperforming schools and districts. [2/09 Order, p. 33; 3/10 Order, p. 16] DEED's refusal to address these issues – and, in particular, the issue of access to high quality pre-kindergarten – is puzzling given the wealth of knowledge regarding the long term academic and socioeconomic benefits of access to high quality pre-kindergarten for at-risk students.

As explained by Professor Linda Darling-Hammond, access to quality early childhood education is critically important to academic success:

Particularly for low-income kids or students who are coming into school non-Native English speakers, students who are coming from a different cultural context without the elements of language development that schools expect, preschool education has a large, well-documented effects on later success. [Dr. Darling-Hammond's Expert Report, pp. 9-10]

Indeed, during the 2008 remedy phase hearing in the *Moore* case, one issue on which the State's witnesses and plaintiffs' witnesses consistently agreed was the importance of early childhood education. According to John Holst, the State's very first witness, many students in remote and underperforming Alaska schools arrive to kindergarten several years behind their same-age peers in academic readiness. As a result, struggling schools are asked not only to provide these students with access to the skills and experiences covered in a kindergarten curriculum, but also to help them make years of academic progress during a single school year. Far more often than not, the result is that the students are unable to ever catch up.

In her testimony, Dr. Darling-Hammond explained that high-quality early childhood education is particularly important to meeting the needs of students in chronically struggling schools and districts:

High quality early childhood education can expand the amount of influence that schools have on student achievement. Because by closing the achievement gap substantially before students start school, they put the students who would normally be lower achieving on a more successful school trajectory. [10/29/08 hearing testimony, p. 72]

Witness after witness in the *Moore* case has testified that if one thing could improve education for at-risk Alaskan students, it would be access to high-quality pre-kindergarten. The reason for this is simple. Across settings – rural schools, urban schools, small schools, large



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



specifically instructed that DEED must insure that an aligned curriculum is available for use in each district by Fall 2010. [3/10 Order, p. 7]

Judge Gleason has made it clear that the State is constitutionally required to take whatever steps are necessary to enable chronically low performing districts and schools to offer a fully-aligned curriculum in each of the state performance standards. Further, Judge Gleason has agreed with the intervention districts that fully aligning the curriculum to the standards is a task well beyond the means of most small districts. State assistance and support to districts must include making available a standardized curriculum and related assessment materials from which districts and schools could draw.

Under the terms of the March 2010 Order, **the State must provide districts with access to an aligned curriculum for each grade level for each subject tested on the SBAs.** This curriculum should include sample lesson plans, research-based instructional strategies and formative assessments to support each subject tested on the SBAs for all grade levels. Plaintiffs further believe the State should likewise provide aligned curricula designed to provide meaningful exposure to each of the State content standards. And, as emphasized throughout Judge Gleason's March 2010 Order, **the State must provide sufficiently detailed professional development to ensure that teachers in the intervention districts are able to utilize the curriculum provided by the State.**

#### **5) Technical Assistance and Enhancement of Educational Resources Within DEED**

In order for the State's interventions to be effective and in order to bring the State into constitutional compliance, **the Legislature must take steps to enhance DEED's ability to effectively support and assist Districts.** These steps should include both the creation and funding of additional content specialist positions within the Department, and an organizational audit to determine how best to enhance DEED's ability to meaningfully support districts.

If DEED is going to provide meaningful technical assistance and support to Districts, **the Legislature must create and fund significant additional content specialist positions within DEED.** DEED currently lacks sufficient subject-matter expertise to offer in-depth technical support to districts and schools. DEED cannot meet its mandate to provide such technical support until it increases its staff to add that expertise. Significant additional content specialists in math, reading, language development, early childhood education, instructional interventions and other areas are necessary to enable DEED to provide much-needed technical support to chronically low performing schools and districts.

In addition, **the Legislature should authorize an organizational audit** to identify and address the systemic barriers to District-Department collaboration and the ways in which DEED can more effectively support the Districts and schools it oversees. The evidence presented in the *Moore* case indicates that the Department's capacity to effectively support Districts is hampered by a lack of staff within DEED to provide effective technical assistance. An organizational audit would assist to identify the specific areas in which the Department's capacity is lacking, and the remedies to those deficiencies.



**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.



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### Pre-Kindergarten

In its February 2009 Conclusions of Law, the Court held that the evidence presented “establishes that there is an array of promising, research-backed remedial measures to address the educational needs of students,” including implementation of high-quality pre-kindergarten. [2/09 Order, p. 54] Indeed, a wealth of research establishes the link between early literacy and long-term educational achievement, and establishes that access to high-quality pre-kindergarten services is a proven way of improving long-term educational achievement for at-risk students. Accordingly, Plaintiffs have prepared draft legislation intended to provide access to high quality pre-kindergarten to students in chronically underperforming schools and districts. The draft legislation is based on the available research identifying what components are necessary to constitute “high quality” pre-k known to achieve long term benefits. The draft legislation also includes assistance to districts to address barriers to establishing a pre-k program, such as teacher housing and classroom facilities.

### Immediate Assistance through Targeted Educational Resources

Plaintiffs have also prepared draft legislation intended to provide immediate assistance to districts in order to provide meaningful educational opportunities for at-risk students, including students in poverty, students who are English Language Learners, students attending schools in which the Department has intervened, and students attending schools in which a significant percentage of students score Far Below Proficient on the Standards Based Assessment.

The bill provides a mechanism to address the various causes of low academic performance in chronically underperforming schools and school districts. These causes include students’ difficulties in English language development; districts’ difficulties in recruiting and retaining high quality teachers; and the lack of access to in-depth professional development related to instructional methodology and intensive interventions for struggling students in these districts.

The bill also provides for loan forgiveness and other incentives for teacher recruitment to struggling remote schools. Some remote districts faced teacher turnover of more than fifty percent at the end of the last school year. Losing half the teaching staff each year makes it virtually impossible for districts to provide staff with in-depth training and professional development, and creates turmoil and uncertainty within the school setting. The bill provides research-based recruitment and retention efforts focusing on financial incentives, as well as access to high quality professional development.

Because of the Departmental capacity issues addressed in the Court’s February 2009 Order, the draft bill also provides for an organizational audit of DEED, to assess and improve its ability to assist districts and chronically underperforming schools through meaningful educational content and assistance.



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### 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.

## Testimony to the House Education Committee

April 9, 2010

Respectfully Submitted by Norman Eck, Ph.D.

Thank you for allowing me the opportunity to testify this morning. For the record, I am Dr. Norman Eck, Superintendent of Northwest Arctic Borough School District. I have been employed as an administrator in this District for 12 years and this is my 5<sup>th</sup> year as superintendent. Last year I was the Alaska State Superintendent of the Year.

On a personal note, I have 2 adopted children, both born in Calcutta, India. My son is 16 and my daughter is 14. Both have had their entire school experience in the Northwest Arctic Borough Schools. Both have scored highly on the State's required tests. My wife is a teacher in Kotzebue High School and she dearly loves her students.

At this time it will do us little good to review the difficult history of intervention that the Department of Education has put upon these five Districts. We have learned from the mistakes made, and we can move forward in a collaborative manner with solid solutions to the problems that we have to address. I think that this can all be done in discussions over the next couple months.

While it is true that our system of public education has its shortcomings, it will do us no good to lament about what is wrong. Doing so will weaken and divide us. What we need to do now is join in our efforts and our actions to provide strength to our classroom teachers and power to the lessons they teach to our students.

Some blame the poor test scores of past years on poverty. Some blame it on teachers, administrators, the school boards, parents, the local community, and even the ability of our children.

I do not buy any of that. The truth is blame accomplishes nothing.

When I take an honest look at my own school district I see many things that we do quite well and some things that leave substantial room for improvement. Over the years many educational programs have been implemented and perpetrated upon our students. Many educational experiments have been done in the name of educational improvement. These programs were, perhaps, well-intended but all too often poorly executed. Let us agree that there are no silver bullets.

Producing better results requires informed decision-making, appropriate training, levels of commitment, support, persistence, and accountability that, until now, have been difficult to achieve or sustain. We know that students living in poverty can achieve at high levels and be successful in school. There is ample research to document not only that it happens, but there are successful strategies we can employ. We have seen this in Northwest Arctic in the past few years where several schools that were poor performers have had increased test scores that we are very proud of.

In order to move us forward, I would like to comment on 4 issues of importance. These are issues that you, as legislators, can address and your actions in the legislature will bring the educational futures of our students to the higher level of success that is needed.

First, I would like to say that the single most important element in improving educational scores in Northwest Arctic is not anything in the school: It is to provide Public Safety to the families and, especially, the children in our villages. I commend the Governor's initiative to increase the ranks of Village Police Safety Officers. This needs to be complimented with an equal number of additional State Troopers. No one in Juneau or Anchorage would feel safe if the streets were patrolled by unarmed VPSO's. We expect to have State Troopers and City Police on duty to keep us safe. This factor cannot be overlooked in improving children's educations in rural Alaska.

Secondly, Early Childhood Education must be in place to insure the success of our students by the third grade. For we know, that if a child is not reading at grade level by the third grade, he or she has a 50% likelihood of dropping out of school. We need at minimum, a two year Kindergarten program, where 4 year olds can come to school and be counted at full FTE's. That would fund the additional teachers required for the program. Parental involvement has to be a major element included in the program, as well. Early Childhood programs must be intentional learning environments, academically based, taught by certified teachers, and they must adopt the 9 standards that are nationally recognized as components of quality early childhood programs.

Let me illustrate, our Kindergarten children come to school and take a test called the Kindergarten Developmental Profile. In the areas of Socialization and Kinesthetic abilities, our children are on par with the average students across Alaska. However, in the areas of pre-cognitive abilities and pre-reading they are, on average, 2 to 3 years behind. That is for students who are five years old. How can you expect students to not only gain a year's growth in a year's span of time, but by 3<sup>rd</sup> grade, just within 4 years, expect them to make up an additional 2 to 3 years of development?

These children do not come to school impaired but they simply have lacked the language and cognitive developmental experiences that most children across America have received. They need language and numerical cognitive experience to be built into the Early Learning and Kindergarten programs. Much research, evidence, and documentation is available to substantiate this.

Third, let me address teaching capacity. The department this past year has done a lot to improve its ability to provide support to teachers. However, it is not sufficient to the need of the teachers that this is directed at. For teachers new to rural Alaska there should be a two-week to a four-week pre-service program that would provide orientation to the cultural setting the teacher is going to, the curriculum to be taught, and the lifeways of the people the teacher is going to serve. Districts cannot afford this out of their regular operating budget.

Another needed program is for teaching certification programs to be offered by our universities in the State that provide an emphasis and specialty in teaching in rural Alaska.

A much overlooked answer in this area is the development of specific teacher training programs to be offered to rural Alaskan students where they can have a direct pathway from high school graduation to a BA degree and certification as a teacher. Magnet-type school opportunities should exist. Smaller regional boarding facilities in rural hub cities can provide the specialization for our students who have high level of abilities but cannot go to Mt. Edgecombe. We have 70 high schools in rural Alaska with 10 or fewer high school students. Strategically placed smaller Mt. Edgecombe-type boarding facilities is an idea whose time has come.

Fourth, targeted assistance programs for rural schools need to be in place. A model for this is one that the Anchorage School District has provided. Examine the history of Mountain View Elementary School. Eight years ago it was considered a school that was failing its students. With specific targeted assistance programs and personnel, it was restructured into being a beacon of success for its community and the children who go there. This school has consistently, over the past 5 years, had high levels of academic achievement by its students. It has made Adequate Yearly Progress as measured by NCLB.

The targeted assistance at Mountain View included additional staffing comprised of a school psychologist, community liaison, English as a Second Language Specialist, a reading specialist, and a speech pathologist, all for this 300 to 400 student school.

In summation, we can do much to bring our students in rural Alaska to high academic achievement. This effort will require our determination and commitment but the pathway is clear. Research has shown that to adopt and fund, and properly implement the four issues I have discussed here this morning will bring success to our students. Thank you.



## DIVISION OF TEACHING & LEARNING SUPPORT

# PERFORMANCE INCENTIVE PROGRAM

## THREE YEAR SUMMARY (2007 – 2009)

### PROGRAM INCEPTION AND RESULTS

In January 2006, former Governor Frank Murkowski submitted to the legislature a bill to authorize incentive payments to certified and non-certified personnel in schools where individual student achievement showed significant growth from the prior school year. This differed from other accountability programs including No Child Left Behind which created comparisons of dissimilar groups of students (e.g., comparing the current year's 6<sup>th</sup> grade class to the previous year's 6<sup>th</sup> grade class).

The legislation was designed to create an environment in Alaska's schools where all staff would have a vested interest in the performance of each student and the school as a whole, and to tie the incentive awards to annual individual student growth so all schools – regardless of past performance – would have an opportunity to achieve the goal. The bill proposed the creation of a three-year pilot program called the Alaska School Performance Incentive Program (PIP) to be administered by the Alaska Department of Education & Early Development (EED).

House Bill 13 was passed during the 2006 legislative session and signed into law as AS 14.03.126 with initial funding of \$5.8 million for the 2006-2007 school year. A methodology was created which analyzed individual student assessment results to the same student's previous year performance and assigned a point value to each of three subject areas (reading, writing, and math) based on what degree the student's scores had increased or decreased compared to the prior year. Student scores were aggregated and averaged to create a school-wide "index score." The index score provided a relative measure of academic growth across the student body.

In August 2007, EED issued the first incentive payments under PIP, distributing \$1,888,187 across 42 schools and 15 school districts. After year one, changes were made to the values table and student score calculations in response to criticism that demographic factors were favoring schools with a smaller percentage of low income and minority students. After these changes were implemented, the average school PIP index value increased in 2008 and 2009; however, fewer schools attained an index score of 107, the minimum cut for PIP awards (Figure 1). In 2008, incentive payments totaling \$1,061,944 were distributed to staff across 32 schools and 14 school districts. In 2009, incentive payments totaling \$305,875 were distributed to staff across 11 schools and 9 school districts.

**Figure 1. - Index Scores vs. Incentive Awards**

Year	Average Index Score	Number of Schools Awarded	Amount Awarded
2007	91.7	42	\$1,888,187
2008	94.6	32	\$1,061,944
2009	92.9	11	\$305,875

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## AWARD RECIPIENT FEEDBACK

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In 2007 and 2009, all PIP award recipients were mailed a survey requesting feedback on PIP. A similar ratio of award recipients responded to the 2007 survey (49%) as to the 2009 survey (47%).

A far higher percentage of 2009 survey respondents (78%) were aware of PIP prior to receiving the incentive payment than 2007 survey respondents (53%). Most respondents (85% in 2009, 79% in 2007) stated the award appropriately rewarded the school in which he or she worked. The amount of the award was also viewed by most respondents (88% in 2009, 75% in 2007) as appropriate in size.

Two-thirds (69%) of 2009 respondents felt PIP had an effect on test scores and encouraged staff collaboration. Only half (52%) of 2007 respondents believed PIP had this effect.

Three-quarters of 2009 respondents had a positive perception of PIP (78%) and supported its continuance (74%). 2007 respondents were not as supportive, as only 62% of respondents had a positive perception of PIP and supported its continuance.

Forty-four percent of all 2007 respondents and 58% of 2009 respondents stated a reason for having a positive perception of PIP. The most cited benefits included monetary rewards (15% of all respondents in 2007 and 2009), positive recognition and reinforcement (11% in 2007, 19% in 2009), and staff motivation (6% in 2007, 7% in 2009). Interestingly, 12% of respondents in the 2009 survey cited improved collaboration, compared to 1% of 2007 respondents.

Thirty-one percent of all 2007 respondents and 19% of 2009 respondents provided a reason for having a negative perception of PIP. The primary criticisms included the program's inability to address demographic and other non-academic factors (9% in 2007, 8% in 2009), the belief that incentive pay was unnecessary or insulting (8% in 2007, 6% in 2009), and that PIP created a divisive atmosphere (4% in 2007, 2% in 2009). In the 2007 survey, 4% of respondents indicated staff at non-recipient schools also deserved awards; however, this criticism was not cited by any respondents in 2009.

Notably, survey respondents in 2009 indicated more support for PIP and were more likely to list non-monetary benefits of the program when stating the reasons for their support. While EED made significant efforts to correct perceived demographic imbalances following the results of the 2007 survey, 2009 respondents were almost as likely to state that the annual list of PIP award winners was strongly influenced by non-academic factors.

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## ANALYSIS

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The Performance Incentive Program (PIP), signed into law in 2006 and executed as a three-year pilot program from 2007 to 2009, was created to provide a means to reward teachers and support staff for growth in student achievement. During its three-year existence, PIP awarded \$3,271,300 in direct payments to teachers, school staff, and district support staff.

By the end of the pilot, PIP was credited by nearly two of five award recipients as recognizing and reinforcing a positive learning environment, helping foster collaborations, and motivating staff to perform at a higher level. Although PIP has not been renewed, this feedback indicates a need for EED to continue finding ways to recognize schools, teachers, and support staff for exceptional performance.

A broader knowledge of the program and its goals may have garnered support for program goals, motivated a greater number of teachers and staff to create unique means to improve student performance, generated collaborative and cooperative environments at additional schools, and provided a greater sense of recognition and professional pride for those who received awards.

EED gained valuable information about individual schools by piloting this program. PIP's methodology for comparing students' performance from one year to the next has provided more useful information than previous accountability systems. PIP has provided clear information about the academic growth of students on an individual and school-wide basis by comparing student performance from one year to the next, creating a more accurate picture of a school's effectiveness than comparing one year's student body with the previous year's student body. This information will continue to help EED evaluate whether schools are chronically underperforming and need assistance in improving student achievement.

DRAFT



**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]



February 2009 Order

Overview: “The Department was ordered to take concerted remedial action because it had violated its constitutional oversight duty by failing to meaningfully intervene before the problems became chronic.” [p. 53] The June 2007 Order “required the State to provide ‘considerably more’ ‘oversight,’ ‘assistance’ and direction’ in ‘a concerted effort to remedy the situation.” [p. 50 (quoting 6/07 Order, p. 189)] DEED’s **“incremental, minimalist initial approach ... is constitutionally inadequate.”** [p. 52]

Court found: **“strong and persuasive evidence”** that DEED’s interventions “have fallen far short of complying” with the State’s oversight requirement (1) because they were **“not effectively implemented** and have not adequately met the needs they were meant to serve” and (2) “because the interventions **target an unjustifiably narrow set of problems**, while ignoring many other educational problems that these local districts have not adequately addressed on their own.” [pp. 50-51]

As to the **design and implementation** of the interventions – the Court found that DEED had:

- “Underestimated the complexity” of the intervention components [pp. 14-28];
- Failed to provide sufficient training, technical support, follow-up and on-site assistance to make these components work [p. 14-28];
- Failed to tailor interventions to specific districts’ individual strengths and weaknesses [pp. 31-33]; and
- Failed to include “any attention to those content areas not covered by the State’s standardized testing.” [pp. 30-31]

As to the actual content of the interventions, DEED’s interventions were inadequate because of their failure to address multiple known causes of underachievement, including:

- Failing to ensure **curriculum alignment.** [pp. 28-30]
  - “All public schools in this state should be teaching a curriculum that includes (yet certainly should not be limited to) materials aligned with the State’s performance standards.” [p. 52]
  - “The State’s interventions to date have not included any concerted effort to insure that the curriculum in each intervention district is aligned with the [GLEs] for the State’s performance standards.” [p. 29]
- Failing to adequately consider **“intensive early learning initiatives designed to address the unique education challenges faced by students in Alaska’s chronically underperforming schools.”** [ pp. 33-35]
  - “The State’s interventions do not address the significant language development gap known to exist in the intervention districts, despite its well-documented connection to student achievement.” [p. 35]
  - Multiple witnesses “testified about the link between early literacy and later academic achievement.” [p. 34]
  - The State’s own expert views preschool as “a highly cost effective way to increase student achievement.” [p. 34]



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- 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].



March 2010 Order

*"The State has failed to demonstrate that it has complied in full with its constitutional obligation to 'maintain a system of public schools open to all children of the State.' ... Dismissal of this action at this time is not warranted."*  
[pp. 14-15]

**"The lack of an aligned curriculum persists in the intervention districts."** [pp. 5-8]

- "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 standards, then **there needs to be considerably greater technical support provided to each district** to enable that district to promptly complete this task." [p. 7]
- "Further[,] unless and until a chronically underperforming 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." [p. 7]

**"The State's effort to insure meaningful exposure to the other content standards in the intervention districts has been inadequate."** [pp. 8-10]

- DEED has failed to sufficiently address the June 2007 holding that an adequate education must include "meaningful exposure" to the areas of the State's content standards.
- The Court's February 2009 order **"cannot reasonably be interpreted to mean"** that all DEED needed to do was provide an operational definition of "meaningful exposure" and a list of resources. [p. 10]
- "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." [p. 10]

**"The State's submissions regarding the HSGQE Remediation Plans are inadequate."** [pp. 11-12]

- "The Department has failed to demonstrate that individual plans are being developed for each student and that those plans are being effectively implemented." [p. 12]
- "The record is silent as to the support and oversight, if any, that the Department is according" to districts to insure that plans are in place and "are being effectively implemented." [p. 11]
- "The record is silent" as to whether the Department is providing "appropriate technical assistance." [p. 11]
- "Given that these districts are in intervention status due to chronic underperformance, **the Department must provide considerably more in the way of technical assistance and guidance to each such district....**" [p. 12]

**"The State has failed to adequately address teacher retention and capacity."** [pp. 12-13]

- "Clearly, the constitutional requirement to 'maintain a system of public schools' requires that there be a capable teaching staff in those schools." [p. 12]



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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.

**Excerpts from the Moore Decision, June 2007**

1. "Alaska's Constitution makes the Legislature – not the local school districts – ultimately responsible for maintaining Alaska's schools."<sup>1</sup>
2. "Here, the evidence has persuasively demonstrated that more funding is not the answer."<sup>2</sup>
3. "There are at least some schools in the Plaintiff school districts in which the available resources have not been adequately or effectively directed to the classroom."<sup>3</sup>
4. "If a school, despite adequate funding, is failing to accord a child with a constitutionally adequate education – such as failing to give that child a meaningful opportunity to acquire proficiency in the State's own performance standards – then the concept of local control must give way because that school is not being maintained as required by the Education Clause."<sup>4</sup>
5. "[T]he State has failed to take meaningful action to maximize the likelihood that children at these troubled schools are accorded an adequate opportunity to acquire proficiency in the State's standards when a school has demonstrated an unwillingness or inability to correct this situation on its own."<sup>5</sup>

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<sup>1</sup> *Moore Decision*, June 2007 at 185.

<sup>2</sup> *Id.* at 188.

<sup>3</sup> *Id.* at 142.

<sup>4</sup> *Id.* at 185-86.

<sup>5</sup> *Id.* at 142.

# Moore vs. State

## *Brief Synopsis*

### Three Rulings

- June 2007
- February 2009
- March 2010

### June 2007

The plaintiffs' claims of inadequate funding were dismissed, but the State was found to be delinquent in the constitutional duty of maintaining a system of education for all children in the State. The court ruled that the due process of the students in underperforming districts in the State was denied in respect to the High School Graduation Qualifying Exams (HSGQE).

### February 2009

#### *Conclusions*

- 1) In 2007 the department was ordered to take measures to bring the schools into compliance. The State argued those measures had been taken. The plaintiffs argued that the efforts failed to comply with the requirements of the 2007 order.
- 2) The question the court chooses to ask the question, "Is the State fulfilling its constitution responsibility to 'maintain a system of public schools'?"
- 3) The first "prong": The court required the State to set "clear standards" for the local districts, so they can know what would have to happen for them to maintain local control.
  - a) The Department has set standards
  - b) But the Department has not provided "clear guidance" as to how those standards will insure that students receive an adequate education.
  - c) The State has not met the responsibility to "maintain a system of public schools" with respect to this.
- 4) The second "prong" was oversight of chronically underperforming districts. The court ruled that the State has fallen "considerably short" of complying with the oversight requirement in two areas.

- a. Remedial measures were not effectively implemented, nor did they meet the needs they were intended to serve.
  - b. The interventions targeted “an unjustifiably narrow range of problems” while ignoring other problems the local districts have not addressed.
- 5) The State provided tools, however those tools were not supported vigorously, nor were the districts able to utilize the tools effectively.
- 6) The State did not tailor the tools to the specific needs of the districts, nor did they adjust the use of the tools when specific conditions seemed to warrant changes.
- 7) The State set up intervention components which could take up to seven years to reach fruition, which the court held to be insufficient.
- 8) The state is not actively pursuing an aligned curriculum, which standardizes required learning for the state.
- a. The State has chosen to focus the intervention on “changing the delivery of instruction” and then dealing with curriculum issues.
  - b. The court held that all schools should teach a curriculum aligned with the State’s standards. “...[A]n incremental, minimalist initial approach that is only now beginning to address the curriculum is constitutionally inadequate.”
- 9) The court acknowledged that geographic, cultural, environment and cultural influences were a factor in the interventions, however the court also held that:
- a. “a array of promising, researched back remedial measures” were not successfully implemented, including a pre-K program, and
  - b. “Conditions within a community do not diminish the State’s constitutional duty to ‘maintain a system of public schools open to all children in the state.’”
- 10) It was noted that especially the department has “categorically declined” to consider a Pre-K program as an intervention.
- 11) As to the High School Graduate Qualifying Exam, the court ruled that:
- a. Due process is denied if children in underperforming areas are not given diplomas because they have not passed the exam; and
  - b. The interventions designed to help children in the underperforming areas have not been implemented.

*Essentially the court found that, “the Department, through delegation from the Legislature, is not currently meeting the State’s constitutional responsibility to ‘maintain a system of public schools open to all children of the State.’”*

The court concluded that the Department has acted in good faith, and the deficiencies may stem from “uncertainty about the extent of the requirements.” The dedication of the Department to presenting meaningful change was also noted, and the Department was accorded additional opportunities to comply.

The Department was ordered to:

- 1) Prepare and file with the court a draft of standards that address the State’s responsibility to insure that chronically performing school districts have “meaningful exposure to the State’s content standards.”
- 2) Review and reconsider district intervention plans that address the particularities of the various districts.
- 3) File with the court a plan of action that addresses the concerns identified with respect to the adequacy of the remediation plans in the intervention districts for the HSGQE.

The State was given sixty days to comply with the above three items.

## **March 2010**

- 1) Five districts were identified as underperforming: Yupiit, Lower Yukon, Yukon Flats, Yukon Koyukuk, and Northwest Arctic Borough School District. The court noted that the interventions were all performed in the proper districts.
- 2) The State asserted that significant progress had taken place, and it had fully complied with the 2009 order. The plaintiffs urged the court to find the state in “continued noncompliance” and requested a Special Master to bring the State into compliance.
- 3) The court ruled that:
  - a. The State has not demonstrated it is in full compliance; and
  - b. A Special Master was not appointed in the hopes that the inadequacies can be addressed by the State.
- 4) The court noted the continued lack of an aligned curriculum
  - a. The State has adopted Standards-Based Assessments, which are noted to be constitutionally sound.
  - b. In 2007 the court found that the State’s instructional standards were not in alignment with the curriculums in the underperforming areas.
  - c. The court noted that currently the students in the underperforming areas are not being given instructional material that is fully aligned with the Standards-Based Assessments.

- d. The State has elected to place the responsibility for curriculum selection on the underperforming districts. The State indicated, according to the court, that the alignment is far from complete, and has not specified a deadline for completion.
  - e. The court ruled that the State's "continued delay" in achieving curriculum alignment is "not constitutionally acceptable."
  - f. The State is ordered to provide the districts with "access to a fully aligned curriculum together with adequate professional training." The lack of teachers trained to teach curriculum that meets State standards is a failure to meet the constitutional obligation to maintain schools.
- 5) The court was also concerned with content in areas apart from the Standards-Based Assessment areas, such as geography, government and citizenship, history, healthy life skills, technology or world languages.
- a. In 2007 the court ruled that the districts must address these areas for the schools to be "constitutionally adequate."
  - b. The court ruled that the recent submissions of the State do not demonstrate a workable plan for the districts to meet this standard of performance.
- 6) The 2009 decision required the State to file a plan to deal with the remediation issues surrounding students who fail the High School Graduation Qualifying Exam.
- a. The court ruled that the plan submitted for the Northwest Arctic Borough School District was adequate, but did not provide plans for support and oversight, to assure the plan is being carried out.
  - b. In the other four districts the court ruled that an appropriate remediation plan was not in place.
  - c. The Department is ordered to provide "considerably more in the way of technical support and guidance" to the districts.
- 7) Teacher turnover was identified as a major issue by the court.
- a. The court found the State has not adequately met this concern
  - b. The court suggests that the State provide resources to conduct exit interviews of teachers to determine why they are leaving.
  - c. The districts should be involved in designing the exit interviews.
  - d. The court found that the State has been active in addressing teacher capacity.
- 8) District Improvement Plans submitted by the districts were inadequate, and that the districts might benefit from technical assistance by the State.

## **Conclusions**

According the court, the State has failed to demonstrate that it is in compliance with the constitutional obligation to provide and maintain an education for all children of the State.

**"In evaluating the State's response 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.”**

The court ordered that five areas be addressed:

- 1) A detailed plan to have a curriculum aligned with the Standards-Based Assessments subject areas—math, writing, reading and science, to be taught beginning Fall, 2010.
- 2) A review of “meaningful exposure” to other content areas that fall outside of the SBAs, but which are important to the education of the child, and a detailed plan as to how to address the deficiencies.
- 3) Detailed remediation plans for junior and senior high students who have not achieved proficiency as measured by the HSGQE.
- 4) District Improvement Plans for each of the intervention districts which address the problems identified in the 2009 decision, that address curriculum alignment, content areas not covered by the State’s standardized testing, ascertainment of specific strengths and weaknesses of the underperforming districts, attention to Pre-Kindergarten or other intensive early learning initiatives, and attention to teaching capacity deficiencies.
- 5) The current status of the Yupiit District.

## Louie Flora

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**From:** Murray Richmond  
**Sent:** Monday, April 05, 2010 5:06 PM  
**To:** Senate Education  
**Cc:** Louie Flora  
**Subject:** Moore hearings  
**Attachments:** Moore vs State 2010.pdf; Moore vs State 2009.pdf; Moore vs State 2007.pdf

Attached you will find the recent documents from the Moore case, which is the subject of Wednesday's joint meeting. The most recent and relevant document is the document labeled *Moore vs. State 2010*, which is also the shortest. *Moore vs State 2009*, weighing in 58 pages is the second most recent. The first ruling by the judge is *Moore vs State 2007*, which is by far the longest. Because of the length of these documents we are sending them by email.

The intent of Wednesday's hearing is to ask how the legislation should respond to the third ruling. In that ruling the judge states, "...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."

The intent of this hearing is NOT to reargue the case. We have invited the State's attorney, Neil Slotnick to be with us, as well as Howard Trickey, the attorney for the plaintiffs. The question before them is "What does this ruling require from the Legislature?"

A memo detailing the rulings is forthcoming.

**Murray Richmond**  
Legislative Aide  
Senator Joe Thomas  
465-6443



adequate supervision and oversight in a concerted effort to remedy that situation."<sup>2</sup> 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."<sup>3</sup>

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.<sup>4</sup>

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

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<sup>2</sup> Decision and Order of June 21, 2007 at 194.

<sup>3</sup> *Id.* at 195.

<sup>4</sup> 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."<sup>5</sup> It maintains that it has demonstrated that it has fully complied with this Court's February 2009 Order, and now has in place a

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<sup>5</sup> 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."<sup>6</sup> 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."<sup>7</sup> 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."<sup>8</sup> And it asserts that "if further proceedings are necessary, they should be in front of this Court," and not before a special master.<sup>9</sup>

### *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

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<sup>6</sup> *Id.* at 40.

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

<sup>8</sup> *Id.* at 53.

<sup>9</sup> *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."<sup>10</sup>

***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.<sup>11</sup>

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

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<sup>10</sup> Decision and Order of June 21, 2007 at 194.

<sup>11</sup> *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.<sup>12</sup>

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."<sup>13</sup>

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."<sup>14</sup> 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."<sup>15</sup>

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

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<sup>12</sup> June 2007 Decision and Order at 188.

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

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

<sup>15</sup> *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."<sup>16</sup>

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.<sup>17</sup> 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

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<sup>16</sup> *Id.* at 41, n.121.

<sup>17</sup> 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."<sup>18</sup>

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."<sup>19</sup> 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.<sup>20</sup> In the June 2007 decision, this Court recognized that to be constitutionally adequate, a public school

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<sup>18</sup> Ex. 2609 at 63691, 63693, 63695.

<sup>19</sup> June 2007 Decision and Order at 186.

<sup>20</sup> *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."<sup>21</sup>

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.<sup>22</sup>

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.<sup>23</sup> And the Yukon Flats School District's draft plan

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<sup>21</sup> *Id.* at 189.

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

<sup>23</sup> 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."<sup>24</sup>

The State's 2009 briefing asserts that "in the future, the Department will monitor intervention districts regarding meaningful exposure for these content areas."<sup>25</sup> 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."<sup>26</sup> 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.<sup>27</sup> 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.

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<sup>24</sup> Ex. 2610 at 63419.

<sup>25</sup> State's Memorandum at 37.

<sup>26</sup> February 2009 Decision at 57-58.

<sup>27</sup> 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."<sup>28</sup> 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

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<sup>28</sup> 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."<sup>29</sup> 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."<sup>30</sup> 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

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<sup>29</sup> State's Memorandum in Support of Filings at 7.

<sup>30</sup> February 2009 Decision at 58. See *supra* pps. 2-3.

system of public schools open to all children of the State."<sup>31</sup> 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.

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<sup>31</sup> 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.<sup>32</sup>

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

DATED this 31<sup>st</sup> day of March, 2010.

Sharon Gleason  
SHARON GLEASON  
Judge of the Superior Court

Copy made on 3-31-10 a copy  
of this 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

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