

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

EDWARD ALEXANDER; JOSH)
ANDREWS; SHELBY BECK ANDREWS;)
and CAREY CARPENTER,)

Plaintiffs,)

v.)

COMMISSIONER DEENA M. BISHOP, in)
her official capacity, STATE)
OF ALASKA, DEPARTMENT OF)
EDUCATION &)
EARLY DEVELOPMENT,)

Case No. 3AN-23-04309CI

Defendant,)

v.)

ANDREA MOCERI, THERESA BROOKS,)
and BRANDY PENNINGTON,)

Intervenors.)

**STATE’S RESPONSE TO PLAINTIFFS’ MOTION FOR LIMITED STAY
AND CROSS-MOTION FOR STAY PENDING APPEAL**

The plaintiffs request that the Court stay the effect of its decision ruling
correspondence school statutes AS 14.03.300-.310 unconstitutional until the end of this
fiscal year on June 30. The State does not oppose a stay—in fact, it affirmatively
requests a stay as well—but it disagrees on the parameters. Instead of a stay just until
the end of this fiscal year, the State requests a stay pending the outcome of an Alaska
Supreme Court appeal which the State agrees should be resolved expeditiously. This
will allow the Alaska Supreme Court to have the last word before Alaska’s

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1 correspondence school programs are upended and the educations of thousands of
2 Alaskan students are irreparably disrupted. Along with a stay pending appeal, the Court
3 should enter final judgment so that the State may commence its appeal.¹

4 **I. The Court’s decision causes an earthquake in the education system without**
5 **explaining how to craft constitutional replacement statutes.**

6 The Court struck down both AS 14.03.300 and AS 14.03.310 entirely, meaning
7 that if the ruling goes into effect, correspondence school programs apparently cannot
8 prepare any “individual learning plans” under AS 14.03.300 (even if those plans do not
9 involve spending student allotments) and cannot provide any student allotments under
10 AS 14.03.310 (even if the allotments are spent only on things like textbooks and laptops
11 rather than on private school classes or tuition). The Court’s ruling thus would seem to
12 prevent the correspondence school program from operating at all.

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14 The Court suggested that the legislature could save the program,² but the Court’s
15 sweeping decision leaves little room for such a fix. The plaintiffs’ main concern was
16 that student allotments are sometimes used to pay for classes or tuition at private
17 schools, and it’s true that the statutes could be amended to prohibit such spending. But
18 this statutory tweak would not comply with the Court’s ruling—on the contrary, the
19 Court applied such a broad reading of the constitutional term “educational institution”
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23 ¹ See Alaska R. App. P. 202 (allowing appeals from a final judgment). The
24 plaintiffs suggest that the Court should delay entering final judgment until after their
25 requested stay expires, but that would mean that the State could not appeal as of right in
the meantime and would have to file a petition for review instead. The State is filing a
motion for entry of final judgment concurrently with this response.

26 ² Order at 33.

1 used in Article VII, § 1 that the Court’s ruling would render unconstitutional even basic
 2 purchases by brick-and-mortar public schools from private businesses like textbook
 3 publishers or equipment vendors.

4 The State had argued that spending at many private businesses (like a textbook
 5 publisher or a store like Best Buy or Jo-Ann Fabric and Crafts³) is constitutionally
 6 unproblematic because such businesses cannot reasonably be considered “educational
 7 institutions” under Article VII, § 1.⁴ But the Court called this distinction “unreasonable”
 8 and refused to draw any line between private “organizations” and private “educational
 9 institutions.”⁵ The Court held that “purchasing educational services and materials from
 10 private organizations with public funds” is unconstitutional apparently no matter what
 11 type of entity the services and materials were purchased from.⁶ However, even brick-
 12 and-mortar public schools make purchases from private entities with public funds.
 13 Alaska’s public schools cannot simply produce their own textbooks or fabricate their
 14 own pencils and computers in-house—they buy what they need from private businesses
 15 just like correspondence school students do with their student allotments. The Court’s
 16 order does not explain how such spending of public funds could be fine for brick-and-
 17 mortar public schools but unconstitutional in the context of correspondence schools.
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23 ³ See Affidavit of Kyle Emili and attachments (attached to State’s Reply, Opp.,
 and Cross-Motion for Summary Judgment).

24 ⁴ See State’s Reply, Opp., and Cross-Motion for Summary Judgment at 10-12.

25 ⁵ Order at 19-20.

26 ⁶ Order at 14.

1 Because the Court’s order does not define the term “educational institution” and
2 instead declares all purchases from all private entities unconstitutional, the legislature
3 could not fix the problem simply by de-authorizing allotment spending at private
4 schools. And indeed, the Court’s order calls into question much spending outside the
5 correspondence school program as well. The Court’s order thus does not give the
6 legislature the guidance it would need to act quickly to prevent widespread harm.

8 **II. Even the plaintiffs acknowledge the need for a stay.**

9 Although it is, as the plaintiffs put it, “unconventional for prevailing parties to
10 seek a stay of ruling in which they prevailed,”⁷ the plaintiffs nonetheless do so,
11 recognizing the untenable situation that the ruling they requested creates for over 22,000
12 Alaskan students. As the plaintiffs correctly observe, “[m]any school districts, parents,
13 and students have engaged in their educational plans in reliance on the availability of
14 the allotment and correspondence system contained in AS 14.03.300-.310,” the two
15 statutes the Court has ruled facially unconstitutional.⁸ And “upending that system with
16 only a month left in the academic year could place a great hardship on those districts
17 and families.”⁹ Thus, the plaintiffs themselves recognize that the Court’s decision
18 cannot be allowed to take immediate effect. The State agrees.

24 ⁷ P’s Motion for Limited Stay at 2.

25 ⁸ *Id.*

26 ⁹ *Id.*

1 **III. The legal standard for a stay is met.**

2 Although the plaintiffs request a stay, they do not apply the legal standard for a
3 stay, so the State does so here. A court may, “in the exercise of its jurisdiction and as
4 part of its traditional equipment for the administration of justice, stay the enforcement of
5 a judgment pending the outcome of an appeal.”¹⁰ A stay “suspends judicial alteration of
6 the status quo” while the appeal is decided.¹¹ A stay must normally be sought first in the
7 trial court before being sought from the Alaska Supreme Court.¹²

9 When considering whether to grant a stay pending appeal, a court applies an
10 analysis similar to that for a preliminary injunction,¹³ which considers the harms the
11 parties face.¹⁴ For purposes of assessing a party’s harm the Court must assume that
12 party will ultimately prevail—i.e., assume the plaintiff will prevail when assessing the
13 harm to the plaintiff, and assume the defendant will prevail when assessing the
14 converse.¹⁵ If the moving party faces “irreparable harm” and the non-moving party can
15 be adequately protected, the moving party “must raise ‘serious’ and substantial
16 questions going to the merits of the case; that is, the issues raised cannot be ‘frivolous or
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19 ¹⁰ *Powell v. City of Anchorage*, 536 P.2d 1228, 1229 (Alaska 1975) (internal
20 quotations omitted).

21 ¹¹ *Nken v. Holder*, 556 U.S. 418, 429 (2009) (cleaned up).

22 ¹² Alaska R. App. P. 205.

23 ¹³ *See Powell*, 536 P.2d at 1229.

24 ¹⁴ *State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 978 (Alaska 2005).

25 ¹⁵ *See Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014) (“[A] court is to assume
26 the plaintiff ultimately will prevail when assessing the irreparable harm to the plaintiff
absent an injunction, and to assume the defendant ultimately will prevail when assessing
the harm to the defendant from the injunction.”).

1 obviously without merit.”¹⁶ Adequate protection exists where the injury that results
2 from the stay “is relatively slight in comparison to the injury which the person seeking
3 the [stay] will suffer if the [stay] is not granted.”¹⁷ If the moving party’s threatened
4 harm is not irreparable or the opposing party cannot be adequately protected, the Court
5 requires the heightened showing of a “clear showing of probable success on the
6 merits.”¹⁸ The Court may also consider the public interest in its analysis.¹⁹

8 **A. Harms**

9 Here, the State and intervenor-defendants (along with many non-parties) face
10 clear irreparable harms absent a stay, whereas the plaintiffs’ harms are “relatively slight
11 in comparison.”²⁰ For decades, the State has offered correspondence schools as one of
12 the options for Alaskan students in furtherance of its constitutional duty to provide for
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22 ¹⁶ *Metcalf*, 110 P.3d at 978.

23 ¹⁷ *Id.* at 978–79.

24 ¹⁸ *Id.*

25 ¹⁹ *State v. Galvin*, 491 P.3d 325, 339 (Alaska 2021) (discussing how the public
interest is implicitly considered in the preliminary injunction analysis).

26 ²⁰ *See Metcalf*, 110 P.3d at 979.

1 education.²¹ Wrongfully removing that educational option—even temporarily—
2 irreparably harms both the State’s education system and the children within it.²²

3 Over 22,000 Alaskan children are currently enrolled in correspondence school
4 programs.²³ Their families have incurred (and continue to incur) educational expenses
5 for this school year that have not yet been reimbursed under the statutes that the Court
6 invalidated.²⁴ Allowing the Court’s decision to take immediate effect would put those
7 reimbursements in jeopardy.²⁵ On top of the specter of unreimbursed expenses for the
8 current school year (and resulting financial insecurity), the students face the irreparable
9 harm of disrupted educational plans for the upcoming school year. Students and families
10 typically make their educational decisions many months ahead.²⁶ If correspondence
11 programs suddenly evaporate, thousands of students will have to change their plans.²⁷
12 Assuming this Court’s decision was incorrect (as one must in this context),²⁸ these

16 ²¹ See Alaska Const., art. VII, § 1; *Hootch v. Alaska State-Operated Sch. Sys.*, 536
17 P.2d 793, 803 (Alaska 1975) (noting that the framers of Alaska Constitution’s education
18 clause did not “require uniformity in the school system” and instead envisioned
19 “different types of educational opportunities including boarding, correspondence and
20 other programs...”).

21 ²² *Cf. Maryland v. King*, 567 U.S. 1301, 1303 (2012) (“[A]ny time a State is
22 enjoined by a court from effectuating statutes enacted by representatives of its people, it
23 suffers a form of irreparable injury.”) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin*
24 *W. Fox Co.*, 434 U.S. 1345, 1351 (1977)).

25 ²³ Goyette Aff. ¶ 3.

26 ²⁴ *Id.* at ¶ 5.

27 ²⁵ *Id.*

28 ²⁶ *Id.* at ¶ 9.

²⁷ *Id.* at ¶ 6.

²⁸ See *Alsworth*, 323 P.3d at 54.

1 students will be wrongfully deprived of their preferred education and forced to scramble
 2 to find other options at a relatively late date.

3 Viable alternatives may be difficult to find for some students in remote areas,
 4 especially those with particular needs or specific course requirements for graduation.²⁹
 5 Because correspondence school classes can count towards graduation requirements,
 6 some students’ plans to meet their graduation requirements and get their diplomas will
 7 be disrupted.³⁰ Eliminating access to the correspondence option would disproportionately
 8 impact students living in rural Alaska who would lose access to robust course offerings
 9 not available locally.³¹ Such harms cannot be undone or indemnified by a bond.
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11 The irreparable harms absent a stay would extend not only to correspondence
 12 students and their families, but also to school districts, teachers, private businesses, and
 13 even brick-and-mortar public schools. Private businesses that sell products and services
 14 to correspondence school students would lose a source of income. School districts with
 15 correspondence schools would be faced with financial and programming uncertainty.³²
 16 The 261 teachers tasked with creating individual education plans for correspondence
 17 school students under AS 14.03.300—which this Court invalidated—would need to be
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21 ²⁹ Goyette Aff. ¶ 9.

22 ³⁰ *Id.* at ¶ 10.

23 ³¹ *Id.* at ¶ 9.

24 ³² Student count information submitted during the 2023-2024 school year is used to
 25 estimate state aid for the 2024-2025 school year. AS 14.17.500; AS 14.17.610. If the
 26 State lacks authority to distribute funding during the 2024-2025 school year to account
 for correspondence students enrolled during the 2023-2024 school year, affected school
 districts would experience a loss in expected funding.

1 re-assigned if possible.³³ Many correspondence students may choose to switch to brick-
2 and-mortar public schools that have not anticipated rising enrollment in their planning
3 and staffing decisions and may struggle to employ enough teachers to meet increased
4 demand given the current teacher shortage.³⁴ This would also create budgeting
5 challenges for school districts because under state law, state funding is sent out monthly
6 and is based on the district’s prior school year pupil counts for the first nine months of
7 the fiscal year.³⁵ Thus, not until the final three months of the fiscal year (April, May,
8 June 2025) would districts begin to receive funding based on their increased costs of
9 providing in-person education. Then, if this Court’s decision is ultimately reversed, all
10 these disruptions to the education system would occur in reverse.
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13 The harms the plaintiffs face without a stay are, by contrast, abstract and
14 “relatively slight in comparison.”³⁶ Indeed, this is apparent from the plaintiffs’ choice to
15 request a temporary stay themselves. The plaintiffs are parents of children attending
16 brick-and-mortar public schools, but this case is not about any direct impact of the
17 challenged laws on their children or families—instead, they sued to vindicate their
18 interpretation of the Alaska Constitution. Although the State acknowledges the
19 importance of complying with the Alaska Constitution, the generalized harm the
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23 ³³ Goyette Aff. at ¶ 7. Laying off teachers at a late date could put districts in breach
of statutory requirements about teacher retention. *See* AS 14.20.140.

24 ³⁴ *Id.* at ¶ 8.

25 ³⁵ *See* AS 14.17.610(a).

26 ³⁶ *See Metcalfe*, 110 P.3d at 979.

1 plaintiffs face from the subset of unconstitutional spending that occurs under these
2 statutes (assuming the plaintiffs are correct that all spending at private schools is
3 unlawful) is abstract and “relatively slight in comparison”³⁷ to the concrete, real-world
4 harms faced on the other side of the ledger. These laws operated for many years before
5 the plaintiffs sued and the plaintiffs’ harm will not appreciably increase if they remain
6 in effect for the additional time it takes for the Alaska Supreme Court to rule on appeal.
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8 **B. Merits**

9 The Court may not agree that it is likely to be overruled on appeal, but the State’s
10 appeal will at least raise “serious and substantial questions going to the merits,”³⁸ which
11 is sufficient here given the stark difference in relative harms discussed above.
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13 Even if the Court believes that a “clear showing of probable success on the
14 merits”³⁹ is necessary for a stay here, the State can make that showing too. The Court
15 struck down AS 14.03.300, the statute about individual learning plans, without any
16 explanation of why individual learning plans (which need not entail allotments at all)
17 are unconstitutional. And as explained above, the Court’s reasoning about allotments
18 would invalidate a broad swath of public-school spending on things like textbooks and
19 computers that must be purchased from private entities. Even if the Supreme Court does
20 not reverse this Court entirely, it will surely answer crucial questions that are necessary
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24 ³⁷ See *id.*

25 ³⁸ See *id.* at 978.

26 ³⁹ See *id.*

1 to allow the legislature to fix the correspondence school program and to ensure that
2 public schools can continue to purchase from private businesses.

3 **C. Public interest**

4 Finally, the public interest strongly favors a stay pending appeal given the harms
5 involved. A generation of Alaskan students have already had their educations
6 interrupted by the COVID-19 pandemic. The more than 22,000 students in
7 correspondence schools should not be further boomeranged back and forth by litigation.
8 The public interest favors not disrupting their educations unless and until the Alaska
9 Supreme Court has held that such disruption is constitutionally required.
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11 **IV. The stay should last until the Alaska Supreme Court rules on appeal rather
12 than only until the end of the fiscal year.**

13 The plaintiffs suggest that the short stay they propose will allow the legislature to
14 save the correspondence school program and avoid the harms discussed above,⁴⁰ but
15 they are wrong about this for three reasons. First, any legislative action before the end
16 of this fiscal year is far from certain. The legislature's regular session ends in 23 days,
17 the legislature has not yet accomplished its primary responsibility of passing a budget,
18 and lawmakers have been sharply divided over educational reform questions during this
19 session. Second, as explained above, the Court's order does not give the legislature the
20 constitutional guidance it would need to enact new correspondence school statutes.
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22 Third, even if the legislature does manage to act, it would have to revisit
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26 ⁴⁰ P.'s Motion for Limited Stay at 4.

1 correspondence school issues yet again if the Alaska Supreme Court ultimately rules
2 differently from this Court, leading to further uncertainty and whiplash.

3 The only way to avoid unnecessarily inflicting the widespread irreparable harms
4 discussed above is to stay the Court’s ruling pending a full decision from the Alaska
5 Supreme Court. Alaska’s highest court should weigh in on the weighty constitutional
6 questions at issue here *before*—not after—those harms occur.⁴¹ The State agrees with
7 the plaintiffs that its appeal should be resolved expeditiously to minimize this period of
8 uncertainty about the correspondence school program. To that end, the State intends to
9 file its appeal as soon as this Court enters its final judgment and to ask the Alaska
10 Supreme Court to hear and decide it on an expedited schedule.

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12 **V. Conclusion**

13 For these reasons, the Court should stay the effect of its ruling pending the
14 Alaska Supreme Court’s decision on appeal. The Court should also enter final judgment
15 so that the State and intervenor-defendants can initiate that appeal.⁴²
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21 ⁴¹ In the event the Alaska Supreme Court’s decision requires a change to the
22 program, the State will ask that court to stay entry of judgment on remand until after the
23 next legislative session. This will provide the legislature the opportunity to act with the
24 full benefit of the Alaska Supreme Court’s reasoning. *See Alaska Civil Liberties Union*
25 *v. State*, 122 P.3d 781, 795 (Alaska 2005) (citing with approval a Massachusetts state
26 court decision where the court “stayed entry of judgment on remand for 180 days to
permit the legislature to take such action as it may deem appropriate in light of th[e]
opinion” (internal quotation marks omitted)).


⁴² The State is simultaneously filing a motion for entry of final judgment and a
proposed final judgment.

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DATED: April 22, 2024.

TREG TAYLOR
ATTORNEY GENERAL

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**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
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Case No. 3AN-23-04309CI

Defendant,)

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ANDREA MOCERI, THERESA BROOKS,)
and BRANDY PENNINGTON,)

Intervenors.)

AFFIDAVIT OF MONICA GOYETTE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Monica Goyette, being duly sworn, states as follows:

1. I am a project coordinator for the Office of the Commissioner, Department of Education and Early Development (DEED), for the State of Alaska. I have personal knowledge of the matters in this declaration. I have been the project coordinator since October 3, 2023. As a project coordinator, I support department

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initiatives like teacher recruitment and retention. I assist the Commissioner's Office during legislative sessions and network with partner agencies to support K-12 and post-secondary education initiatives.

2. Prior to working for DEED, I was employed by the Mat-Su Borough School District from August of 1999 through June of 2023, including serving as the MSBSD Superintendent from April of 2017 through June of 2020. As superintendent, I supported and oversaw Mat-Su Central School, a state-wide correspondence school.
3. The following information was provided by school districts to the Department of Education and Early Development (DEED) through the Online Alaska School Information System (OASIS), and through the Correspondence School application and approval process. It was current as of April 16, 2024.
 - a. Twenty nine out of 54 school districts offer correspondence schools.
 - b. There are a total of 36 correspondence schools within the 29 districts.
 - c. Fifteen of the 36 correspondence schools offer state-wide services to students outside of their geographic boundaries. Therefore, all students could have access to correspondence school services within the state of Alaska.
 - d. The 2023-2024 full-time student enrollment for correspondence schools is 22,289.30¹ based on the twenty-day October count period.

- e. Two hundred and sixty-one teachers are employed by 34 correspondence schools serving 22,289.30 students. Two of the 36 correspondence schools currently do not have enrolled students or teachers associated with the programs.
 - f. The state funding allocated for Correspondence Schools in Fiscal Year 2024 amounts to \$119,559,805. This funding is determined by the foundation formula: Base Student Allocation (BSA) multiplied by 90% multiplied by the Adjusted Daily Membership (ADM). The Fiscal Year 2024 calculation is $\$5,960 \times 90\% \times 22,289.30 = \$119,559,805$. Payments are distributed on a monthly basis.
4. If correspondence schools cannot operate due to the superior court's decision, families in Alaska will have fewer educational options.
 5. Families of correspondence students have incurred (and continue to incur) educational expenses for the 2023-2024 school year that have not yet been reimbursed under the statutes the superior court found unconstitutional. If correspondence study programs cannot operate due to the superior court's decision, families who have incurred educational expenses may not be reimbursed from their allotment funds.

¹ Based on 4 AAC 09.040, if a student is enrolled in correspondence school less than full time, the student is counted as less than a 1.0 full-time equivalent student for funding purposes.

6. If correspondence schools cannot operate for the 2024-2025 school year, currently enrolled correspondence students and their families will be required to find other educational alternatives for the upcoming school year.
7. As a former superintendent, teachers were allocated to schools based on student enrollment. If correspondence schools cannot operate for the 2024-2025 school year, the 261 teachers currently employed in correspondence schools would need to be re-assigned to brick and mortar schools.-
8. The 2023-2024 average correspondence teacher caseload for the state of Alaska is 85-to-1 based upon 261 teachers serving 22,289.30 students. The 2023-2024 average state-wide Pupil-to-Teacher Ratio (PTR) is 17.48-to-1. Based on the PTR average of 17.48, if all correspondence students enrolled in brick-and-mortar schools, districts would need a total of 1,275 teachers to educate the students. The state of Alaska is experiencing a teacher shortage. For the 2019-2020 school year, there were 155 certificated staff vacancies on the first day of school. For the 2023-2024 school year, there were 515 certificated staff vacancies. Based on the existing teacher shortage, it would be challenging, if not impossible, for districts to hire the additional teachers required to educate all correspondence students entering the brick-and-mortar system.
9. I am aware through my current role with DEED and my experience as a school district superintendent, that students and families typically make educational decisions many months ahead. Students plan their schedules and make class

selections in early spring for the fall semester of the upcoming school year. Viable alternatives may be difficult to find for some students in remote areas, especially those with particular needs or specific course requirements for graduation. For example, curriculum available through correspondence programs includes courses in Career and Technical Education, Foreign Language, and advanced curriculum like Advanced Placement (AP) and International Baccalaureate (IB).

Eliminating access to correspondence would disproportionately impact students living in rural Alaska who would not have access to robust course offerings in the smaller school.

10. The Department of Education and Early Development has established minimum graduation requirements in regulation (4 AAC 06.075). Graduation requirements may be met through correspondence school classes. If correspondence schools cannot operate, some students' plans to meet graduation requirements will be disrupted.


11. I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 22, 2024.



Monica Goyette

SUBSCRIBED AND SWORN TO before me this 22 day of

April, 20 24.



Notary Public in and for Alaska
My Commission Expires: 09/04/2024



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**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
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EDWARD ALEXANDER, JOSH)
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ANDREWS, & CAREY)
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Plaintiff,)

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EARLY DEVELOPMENT,)

Defendants,)

v.)

ANDREA MOCERI, THERESA)
BROOKS, and BRANDY)
PENNINGTON.)

Intervenors.)

Case No. 3AN-23-04309CI

[PROPOSED] ORDER GRANTING STAY PENDING APPEAL

IT IS ORDERED that, having reviewed the State’s cross-motion for stay pending appeal and any responses, the Court hereby GRANTS the State’s request. The effect of this Court’s April 12, 2024 order granting summary judgment to the plaintiffs and the Court’s final judgment pursuant to that order is hereby stayed pending the outcome of any appeal to the Alaska Supreme Court or until the time for appeal has expired.

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DATED _____, 2024, at _____, Alaska.

The Honorable Adolf Zeman
Superior Court Judge