

AASB EXECUTIVE ADMINISTRATORS WORKSHOP

**NEW LAWS AND REGULATIONS IN ALASKA
2019**

***Presented by Michael Caulfield
Jermain Dunnagan & Owens, P.C.***

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New update coming in February/March 2020.

I. ALASKA REGULATIONS

a. AdvancED Standards

This regulation changes the regulations that set the standard for state accreditation of schools. The Alaska Department of Education has adopted by reference two new AdvancED published documents which set the standards under which public schools must reach to receive accreditation by the state.

- Amending pertinent regulations in 4 AAC 04.300(b).

b. School Facility Planning and Construction

The Department of Education has made numerous changes to the Alaska Administrative Code sections that address school facility planning and construction. Updates include:

1. Changes to 4 AAC 31.013, providing criteria for a preventive maintenance program of a school district eligible for state aid for school construction and major maintenance. The changes adopt a periodic evaluation of commissioning existing facilities to a qualifying energy management plan.
2. Changes to 4 AAC 31.021(e) and (g), portions of 31.030(a) and 31.040(a), 31.064, 31.065(a), and 31.080(b) and (g) improve the process of capital improvement project (CIP) requests and the administration of capital project funding by clarifying requirements at a greater level of detail than currently provided. These proposals are not intended to change or limit project eligibility or funding.

3. Changes to 4 AAC 31.023(c)(7) and (e) serve to limit funding of indirect and administrative costs that are based on a percentage rate and not supported with detailed accounting.
4. Changes to 4 AAC 31.065 add commissioning as a professional service subject to requirements for open, competitive selection when above the \$50,000 threshold. Changes also limit funding of professional services, construction, and purchase or lease of existing facility if requirements in the respective sections are not complied with.
5. An amendment to 4 AAC 31.080 specifies commissioning as an allowable school construction project cost and provides a requirement for commissioning based on the type, size, and complexity of the school capital project.
6. Changes to 4 AAC 31.900 provides necessary definitions of the terms "commissioning" and "commissioning agent," define a school capital project, and increase the minimum project cost to \$50,000 for eligibility aid in school capital projects.
 - a. "Commissioning" means functional testing activities for a mechanical, electrical, fuel oil, controls, or building envelope system to ensure that a facility or a system operates as the owner and designers intended and that prepares an owner to efficiently operate its systems and equipment.
 - Amending pertinent regulations in 4 AAC 31.013, 4 AAC 31.016, 4 AAC 31.020, 4 AAC 31.022, 4 AAC 31.023, 4 AAC 31.026, 4 AAC 31.030, 4 AAC 31.040, 4 AAC 31.060, 4 AAC 31.061, 4 AAC 31.064, 4 AAC 31.065, 4 AAC 31.080, 4 AAC 31.085, 4 AAC 31.220, and 4 AAC 31.900. Repealing and readopting 4 AAC 31.021.

c. Teacher Certification

These amendments include additions to the list of approved basic competency exams and allow teachers who have completed a basic competency exam in the areas of reading, writing, or mathematics with qualifying scores approved by another certifying state agency to use that exam to satisfy the basic competency exam requirement of AS 14.20.020(i). The amendments would also eliminate the basic competency exam requirement for a Type-M limited career or technical education (CTE) certificate.

- Amending pertinent regulations in 4 AAC 12.310 and 4 AAC 12.372.

d. K-12 Science, Computer Science, Digital Literacy, and Content and Performance Standards

These amendments adopt digital literacy standards and publish them as the Alaska Digital Literacy Standards.

- Amending pertinent regulations in 4 AAC 04.030, 4 AAC 04.140, and 4 AAC 04.180.

e. Accountability System Sub-Interval Scores

These amendments update the sub-interval scores on the Performance Evaluation for Alaska's Schools (PEAKS) assessments for grade 9 math that are used to calculate student growth within the System for School Success, Alaska's new accountability system.

- Amending pertinent regulations in 4 AAC 06.822.

II. Alaska Education Law in the Courts

a. *Alaska Legislature v. Dunleavy*, Case No. 1JU-19-753CI

This lawsuit is a dispute between the Legislature and the Governor that asks whether the Legislature can appropriate funding to school districts with a delayed effective date. The Legislature has, in the past, appropriated monies to school districts a year in advance, to provide stability to districts and allow them to make financial decision with confidence in the funding they will receive from the state. This is especially important given the fiscal uncertainty and extended disputes in Juneau, where budgetary decisions in the Legislature are not being resolved in time for school boards to know how much funding they will have when setting their own budgets. Governor Dunleavy asserts this “forward funding” is unconstitutional.

The two primary issues are: 1) whether the Legislature’s allocation of funds to schools constitutes an unconstitutional “dedicated fund,” and 2) whether the Legislature may allocate funding for schools a year in advance.

On November 7, 2019 Alaska Superior Court Judge Daniel Schally ruled in favor of the Legislature and held that the forward funding was constitutional. It is likely this case will eventually be resolved by the Alaska Supreme Court.

III. Year in Review

a. Procedures for Updating Textbooks and Instructional Materials and Curricula Review

SB 104 is an omnibus bill which contains a number of changes to state law regarding curricula review. The most immediate change for individual districts is their school boards must now develop procedures to update textbooks and instructional materials at least once every ten (10) years. Regular updates were required under the previous statute, but there was no set deadline for how often the updates were mandatory.

This bill also provides numerous new requirements for DEED. The Department is required to establish standards and a procedure for the review, ranking, and approval of mathematics and English and language arts curricula for school districts to use in each grade level. The standards and procedures will seek to identify ways that curricula may be modified to increase performance across all grade levels. The bill also creates incentives (up to \$10 million per district) to encourage districts to take part in a pilot program once the new criteria are developed.

If the criteria prove successful at the pilot districts, the revised standards may become available to all districts starting in the 2022-2023 school year. The bill also creates a “curriculum improvement and best practices fund” which could eventually be expended by the Department to incentive new curricula. No monies have been appropriated to the fund at this time.

The bill also instructs DEED to make available to all school districts an electronic system for managing student information and tracking records relating to individualized education programs for children with disabilities. By statute, DEED must, to the extent permitted by federal law, allow school districts to transfer special education records for a student when the student transfers to a different school district. Once the system is in place, records transfers between districts should be made easier.

Finally, this bill requires DEED to develop a comprehensive program to provide education and resources to prevent teen marijuana use. The program will address marijuana use prevention through outcome-based curricula, adult and peer mentoring, and opportunities for positive, prosocial leisure and recreational activities. The bill does not require districts to make any immediate changes to board

policy, but additional regulation pertaining to marijuana, and marijuana education, is likely.

- Enrolled SB 104, amending AS 14.07.030, AS 14.07.165, AS 14.07.180, AS 14.07.182, AS 14.08.111, AS 14.14.090, AS 14.16.020, AS 14.30.285, AS 43.61.010, AS 43.61.010, AS 44.29.020. Effective date May 12, 2018.

b. Alcohol, Tobacco, and Drug Use

Language was added to BP 4020 to clarify that marijuana is a prohibited drug for employees under a district's drug-free workplace policy. Although state law (AS 17.38) authorizes the use of marijuana under certain conditions, this law also recognizes that employers can prohibit the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace. AS 17.38.120(a). Further, as recipients of federal funds, districts are obligated to maintain a drug-free workplace consistent with federal law, which prohibits the manufacture, sale, distribution, or possession of marijuana. For purposes of district policy and legal obligations, marijuana may be prohibited.

A definition of "drug" was added to include marijuana, synthetic drugs, and prescription drugs that are being misused. Language was added prohibiting staff from displaying or promoting prohibited substances while at work via slogans on their clothing or signage on their vehicles.

Finally, the language governing discipline was revised to more accurately reflect current disciplinary practices regarding consideration of treatment options. The language will also be revised to clarify that the Superintendent or designee, rather than the Board, is responsible for discipline decisions.

- Modifying BP 4020.

c. Security Check

The policy BP 4112.5 does not require revision. The AR, which is administrative and does not require formal Board adoption, was revised to provide guidance to a district regarding crimes of violence and controlled substance violations.

The crime of violence definition that was added is based upon the federal definition, 18 U.S.C. 16, but has been modified to exclude references to physical force against property and to require that the crime of violence be a felony in order to act as a

permanent ban on employment. In addition, a new section was added that will permit the Superintendent, in her or her sole discretion and only for good cause, to consider the employment application of an individual otherwise banned from consideration. This provides some flexibility to a district, if desired, to consider applicants that may not pose a concern due to the nature of the job or the years that have elapsed since conviction.

Finally, language was added that permits applicants with marijuana convictions to be considered for employment without regard to the five year window. This change takes into account the change in state law.

- Modifying AR 4112.5.

d. Employment References

Language in BP 4112.61 prohibiting non-designated employees from providing employment references was removed. However, the policy continues to convey the expectation that the Superintendent or designee is responsible for providing reference information on behalf of a district. Language was added to provide that references not secured through this process, i.e., provided directly by a supervisor, reflect the personal views of the author and not the views of a district. The addition of this language provides some protection to a district in the event that a non-sanctioned job reference is intentionally false or malicious.

- Modifying BP 4112.61.

e. Nonretention, Dismissal, and Layoff

The current model separation policy is unwieldy because it covers three significant employment situations -- nonretention, dismissal, and layoff -- in a single policy with multiple parts and sections. It is also not clear whether the “sections” are intended as policy or regulation. For these reasons, as we continue our development of these important provisions, it is recommended that current personnel policies be withdrawn and the following policies adopted and/or revised with the following anticipated revisions:

- **BP/AR 4117.3 Personnel Reduction**

Many districts currently have a short policy at BP 4117.3 entitled Personnel Reduction. That policy will be expanded upon to address layoff plans that are

required by statute, AS 14.20.177. Also included for consideration will be AR 4117.3, a Personnel Reduction/Layoff Plan policy that reflects a process for development and implementation of the statutory layoff plan.

- **BP/AR 4117.4 Dismissal**

This new policy will generally reflect the statutory requirements for dismissal of certificated staff, AS 14.20.170. AR 4117.4, Dismissal Procedures, contains the detailed procedures required by law for termination of certificated employees. These procedures are consistent with current language except that the pretermination hearing procedures will be revised to more accurately reflect the requirements of statute. In addition, deadlines for the completion of prehearing tasks will be removed (except those required by statute) in order to provide administrative and board flexibility to set deadlines in each particular case.

- **BP/AR 4117.5 Nonretention of Nontenured Staff**

This new policy will reflect the statutory requirements for nonretention of nontenured staff, AS 14.20.175(a). New AR 4117.5, Informal Hearing for Nonretention of Nontenured Staff, will vary from the old policy to more accurately reflect the requirements of statute.

- **BP/AR 4117.6 Nonretention of Tenured Staff**

This new policy will reflect the statutory requirements for nonretention of tenured staff, AS 14.20.175(b). New AR 4117.6, Procedures for Nonretention of Tenured Personnel, contains the detailed procedures required by law for nonretention of certificated employees, AS 14.20.180. These procedures are consistent with current language except that deadlines for the completion of prehearing tasks will be removed (except those required by statute) in order to provide administrative and board flexibility to set deadlines in each particular case.

- Removing BP 4117.4, adding BP/AR 4117.3-6.

f. Political Activities of Employees

Additional language was added to BP 4119.25 concerning prohibited activities during an employee's duty day. Additional language was added to establish that the prohibitions of the policy are not applicable to classroom instruction that is part of

the approved curriculum. Finally, language was added that clarifies the ability of a district and board to disseminate factual information regarding bond projects.

- Modifying BP 4119.25.

g. Employees with Infectious Diseases

It is recommended that the old policy BP 4119.41 be replaced with the new model policy addressing infectious diseases. The new policy reflects current obligations with regard to infectious disease and eliminates the requirement for written reports describing reasonable accommodations for individuals with infectious diseases. The new policy focuses more clearly on the goal of preventing the outbreak and spread of infectious disease.

- Replacing BP 4119.41.

h. Publication or Creation of Materials

It is recommended that the old policy BP 4132 be replaced with a new policy. The new policy reflects updated legal standards for the copyright and ownership of materials prepared by an employee within the course and scope of employment. Districts have seen an increase in copyright claims by license holders of images and publications, and clear guidance and policy will help prevent accidental misuse of licensed images.

- Replacing BP 4132.

i. Load Scheduling/Hours of Employment

Language was added to BP 4313.1 reflecting the requirement of the Fair Labor Standards Act that exempt employees are not subject to salary deductions for absences of less than a day.

- Modifying BP 4313.1.

QUESTIONS?

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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Linda Mattson
Department of Education and Early Development

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: October 29, 2019

RE: Filed Permanent Regulations: Department of Education and Early Development
Department of Education and Early Development Regulation re: AdvancED Standards
(4 AAC 04.300)

Attorney General File:	2019200277
Regulation Filed:	10/29/2019
Effective Date:	11/28/2019
Print:	232, January 2020

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis

4 AAC 04.300(b) is amended to read:

(b) The standards for state accreditation for a public or private school in this state are set out in AdvancED Performance Standards for Schools and AdvancED Performance Standards for School Systems [STANDARDS FOR QUALITY SCHOOLS], published by AdvancED in 2017 [AS OF 2011,] and adopted by reference.

4 AAC 04.300(c) is amended to read:

(c) A public or private school in this state will be accredited by the department under AS 14.07.020(a)(6) if the school is accredited by the Northwest Accreditation Commission, a division of AdvancED [NORTHWEST] after completion of the accreditation process, including the internal review and the external review. (Eff. 10/25/98, Register 148; am 10/16/2021, ²⁰¹² Register 204; am 4/4/2013, Register 206; am ²⁰¹⁴ 11/28/2014, Register 232)

Authority: AS 14.07.020 AS 14.07.060

The editor's note for 4 AAC 04.300 is changed to read:

Editor's note: A copy of the AdvancED Performance Standards for Schools and AdvancED Performance Standards for School Systems [STANDARDS FOR QUALITY SCHOOLS], adopted by reference in 4 AAC 04.300(b), may be obtained by writing to the Department of Education and Early Development, 801 West 10th Street, Suite 200, P.O. Box 110500, Juneau, AK 99811-0500 or by contacting AdvancED at <http://www.advanced.org/managing-office-locations/alaska-office> [HTTP://WWW.ADVANCED.ORG/WEBFM_SEND/288].

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**OFFICE OF THE LIEUTENANT GOVERNOR
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MEMORANDUM

TO: Linda Mattson
Department of Education and Early Development

FROM: April Simpson, Office of the Lieutenant Governor 465.4081 

DATE: October 29, 2019

RE: Filed Permanent Regulations: Department of Education and Early Development
Department of Education and Early Development Regulation re: School Facility
Planning and Construction Regulations (4 AAC 31)

Attorney General File:	2018200923
Regulation Filed:	10/29/2019
Effective Date:	11/28/2019
Print:	232, January 2020

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis

4 AAC 31.013(e) is amended to read:

(e) [ON AN ANNUAL BASIS, THE] The department will make a determination of a district's [SHALL PROVIDE A PRELIMINARY NOTICE TO EACH DISTRICT REGARDING ITS] compliance with each element required in (a) of this section, based on evidence of a program [THAT WAS PREVIOUSLY PROVIDED TO] acquired by the department, [OR THAT WAS] including information gathered by the department during an on-site visit conducted under (f) of this section. The department may change a determination at any time during the year based on new evidence. For purposes of eligibility for an application submitted under AS 14.11.011, on [ON] or before June 1, the department will provide [ITS] preliminary notice of its determination. [THE DEPARTMENT MAY CHANGE A DETERMINATION OF NON-COMPLIANCE AT ANY TIME DURING THE YEAR BASED ON NEW EVIDENCE.] Districts that are not in full compliance must provide evidence of compliance to the department by August 1. On or before August 15, the department will notify districts of its final determination regarding compliance. The department will deny a grant application submitted under AS 14.11.011 by a district that has received a final determination from the department that the district is out of compliance with this section.

4 AAC 31.013(f) is amended to read:

(f) The department will [SHALL] conduct an on-site inspection [INSPECTIONS] of a school district preventive maintenance and facility management program [PROGRAMS] at least once every five years; however, if the department issues a finding of noncompliance under (e) of this section and the district does not provide adequate evidence of compliance, the department may postpone an on-site visit beyond the five-year period. The department

may make additional inspections as it **determines** [DEEMS] necessary. The department may change its determination of compliance based on information obtained during **an** [THE] on-site **inspection** [INSPECTIONS].

4 AAC 31.013 is amended by adding a new subsection to read:

(h) Notwithstanding (e) and (f) of this section, the department may make a determination of provisional compliance for a district that provides evidence of a plan that meets all required elements identified in (a) of this section but does not provide documentation of adherence to that plan. A determination of provisional compliance will allow a district to be eligible for state aid until a final determination of compliance or noncompliance is provided. (Eff. 5/24/2001, Register 158; am 12/19/2002, Register 164; am 12/15/2004, Register 172; am 6/17/2010, Register 194; am 11/28/2019, Register 232)

Authority: AS 14.07.020 AS 14.11.011 AS 14.11.132
AS 14.07.060

4 AAC 31.016 is amended by adding a new subsection to read:

(i) The enrollment calculated for students in leased space will be excluded from use in calculating eligibility for additional square footage for facilities unless

(1) that enrollment is in an attendance area comprised of a single school; or

(2) the lease is due to terminate within two years and ^{the} district submits an application for a capital improvement project under AS 14.11 for new school construction to house the student population of the terminating lease space. (Eff. 7/13/2000, Register 155; am 12/19/2002, Register 164; am 11/28/2019, Register 232)

Authority: AS 14.07.060 AS 14.11.015 AS 14.11.100
AS 14.11.011 AS 14.11.017 AS 14.11.132
AS 14.11.013

4 AAC 31.020(a) is amended to read:

(a) The following are the basic guides for educational facility planning **adopted by reference:**

(1) for a school capital project application submitted to the department, *Creating Connections: The CEFPI Guide for Educational Facility Planning*, 2004 **edition** [EDITION], as published by the Council of Educational Facilities Planners International;

(2) repealed 4/17/98;

(3) repealed 4/17/98;

(4) *Guidelines for School Equipment Purchases*, as published by the Alaska Department of Education and Early Development, **2016 edition** [1997 EDITION];

(5) deleted 8/31/90;

(6) repealed 4/17/98;

(7) *Swimming Pool Guidelines*, as published by the Alaska Department of Education and Early Development, 1997 edition; and

(8) **Site Selection Criteria and Evaluation Handbook** [SITE SELECTION CRITERIA AND EVALUATION GUIDELINE], as published by the Alaska Department of Education and Early Development, **2011 edition** [1997 EDITION].

4 AAC 31.020(d) is amended to read:

(d) The department will [SHALL] reduce a project budget in proportion to the amount that the project's design exceeds the square feet allowable as determined under (c) of this section[.THIS SUBSECTION APPLIES TO A PROJECT], until an agreement, as described in 4 AAC 31.023(c), is fully executed [THAT HAS NOT RECEIVED A GRANT UNDER AS 14.11, A PROJECT THAT HAS RECEIVED MONEY FROM THE DEPARTMENT FOR PLANNING]. The department may proportionally reduce the project budget under this subsection if [, AND] a project [THAT] has not secured the approval of the commissioner under 4 AAC 31.040 [THIS SUBSECTION DOES NOT APPLY TO A PROJECT THAT HAS SECURED THE APPROVAL OF THE COMMISSIONER UNDER 4 AAC 31.040].

(Eff. 3/1/78, Register 65; am 6/9/83, Register 86; am 12/2/83, Register 88; am 8/31/90, Register 115; am 10/7/95, Register 136; am 4/17/98, Register 146; am 2/18/99, Register 149; am 7/13/2000, Register 155; am 8/23/2001, Register 159; am 12/20/2002, Register 164; am 6/17/2010, Register 194; am 11/28/2019, Register 232)

Authority:	AS 14.07.020	AS 14.11.011	AS 14.11.100
	AS 14.07.060	AS 14.11.020	AS 14.11.132

4 AAC 31.021(e) is repealed and readopted to read:

(e) Using the criteria set out in 4 AAC 31.022(b), the department will score each application and use the score to assign a priority ranking to the projects approved for eligibility. The department may annually approve a school district's request to reuse an original application and its score for up to five additional years after the year the original application is submitted, if, for a school capital project listed in the district's six-year capital improvement plan,

(1) the school district identifies, in a letter accompanying the six-year plan, the specific application for which the district requests consideration beyond the initial application period;

(2) the chief school administrator certifies in writing that the district's eligibility for any additional square footage associated with the project has not decreased; and

(3) for requests to reuse the application and score

(A) for the first additional year,

(i) the physical condition of a facility included in the project has not deteriorated so as to increase the project's cost to exceed the amount determined by application of the inflation factor under (f) of this section; and

(ii) health and life safety conditions and code conditions have not changed so as to affect the project's score under 4 AAC 31.022(b); or

(B) in years two through five after the year of the original application, the project construction is substantially complete at the time of the original application; an inflation factor under (f) of this section will not be added to the project cost when an application is reused under this subparagraph.

4 AAC 31.021(f) is repealed and readopted to read:

(f) If, under (e) of this section, the department approves a district's reuse of its previous year's application and score for one additional year after the year the original application is filed, the department will add an inflation factor based on an industry-accepted method to costs anticipated to occur after the award of the grant.

4 AAC 31.021(g) is repealed and readopted to read:

(g) If, under (e) of this section, a district reuses its original application and score for one or more additional years after the year the original application is filed, the district may not appeal its priority ranking in any of the additional years.

4 AAC 31.021(h) is repealed and readopted to read:

(h) A grant application must include certification that insurance or a program of self-insurance exists under 4 AAC 31.200 – 4 AAC 31.225 and will be revised, if necessary, to include the proposed facility. (Eff. 8/31/90, Register 115; am 8/12/93, Register 127; am 3/10/96, Register 137; am 4/17/98, Register 146; am 7/13/2000, Register 155; am 12/19/2002, Register 164; am 6/17/2010, Register 194; am 11/28/2019, Register 232)

Authority:	AS 14.07.060	AS 14.11.011	AS 14.11.132
	AS 14.11.008	AS 14.11.013	

4 AAC 31.022(b) is amended to read:

(b) When reviewing the six-year capital improvement plans and the grant applications submitted by school districts, department staff shall separately rank projects in the following classifications in the first year of the plan, in descending order of priority, as serves the state's best interests, where[:]

(1) school construction projects are those projects the primary purpose of which is to accomplish work under the categories established in AS 14.11.013(a)(1)(A), (B), (F), and (G) [AS 14.11.013(a)(1)(A), (a)(1)(B), AND (a)(1)(E) - (a)(1)(G)]; and

(2) major maintenance projects are those projects the primary purpose of which is to accomplish work under the categories established in AS 14.11.013(a)(1)(C) - (E) [AS 14.11.013(a)(1)(C) AND (D)], except that a major maintenance project may not include additional or replacement square footage.

(Eff. 8/31/90, Register 115; am 8/12/93, Register 127; am 10/7/95, Register 136; am 4/17/98, Register 146; am 7/13/2000, Register 155; am 12/19/2002, Register 164; am 6/17/2010, Register 194; am 11/28/2019, Register 232.)

Authority: AS 14.07.060

AS 14.11.013

AS 14.11.132

AS 14.11.011

4 AAC 31.023(c) is amended to read:

(c) The department will, before the disbursement of a grant or allocations of other financial assistance [MONEY] to a school district, require the execution of a grant or other financial assistance agreement, on a form prescribed by the commissioner, that contains the following conditions:

(1) the project will be constructed and equipped under the requirements of 4 AAC 31.020(a), within the project budget determined under 4 AAC 31.022(e);

(2) money will be disbursed as the parties agree to allow the accomplishment of stages in the project, such as site acquisition; design and construction; and to reimburse the district for money actually and necessarily spent, before the award of the grant or allocation of other financial assistance,

(A) for application costs, planning costs, design costs, and construction costs incurred not more than 36 months before the initial submission of the grant or other financial assistance application with a substantially identical scope; and

(B) site acquisition costs incurred not more than 120 months before the initial submission of the grant or other financial assistance application with a substantially identical scope for which the department has given its approval under 4 AAC 31.025;

(3) the district's performance under the grant or other financial assistance is subject to financial audit at any time; the cost of an audit required by the state is an allowable cost of school construction;

(4) the site for the school facility is approved under 4 AAC 31.025;

(5) designers, commissioning agents, and construction managers of the facility shall be selected under 4 AAC 31.065; [AND]

(6) construction shall be performed by contracts awarded under 4 AAC 31.080;

and

(7) unless a district provides documented evidence of project-specific indirect administrative costs in excess of these limits, indirect administrative costs may not exceed

(A) three percent of construction costs, if construction costs are \$500,000 or less;

(B) the greater of \$15,000 or two percent of construction costs, if construction costs are over \$500,000 but less than \$5,000,000;

(C) the greater of \$100,000 or one percent of construction costs, if construction costs are \$5,000,000 or more.

4 AAC 31.023 is amended by adding a new subsection to read:

(e) In (c) of this section,

(1) “indirect administrative costs” means an allocable portion of administrative and operating expenses; and

(2) “construction costs” means the cost of contracted work as well as force account for facility construction, site preparation, site improvements, and utilities. (Eff. 8/31/90, Register 115; am 8/12/93, Register 127; am 4/17/98, Register 146; am 2/18/99, Register 149; am 11 / 28 / 2019, Register 232)

Authority:	AS 14.11.013	AS 14.11.017	AS 14.11.132
	AS 14.11.015	AS 14.11.100	

4 AAC 31.026(d) is amended to read:

(d) Within 10 working days after the filing of an appeal under (c) of this section, the **chief administrative law judge of the office of administrative hearings (AS 44.64.010)** [COMMISSIONER] shall appoint a hearing officer to hear the case. The hearing officer shall consider the issues raised in the appeal on the basis of

(1) the school district's updated capital improvement plan submitted under 4 AAC 31.011;

(2) the grant application, and supporting documentation submitted by the school district under 4 AAC 31.020(c);

(3) the comments received at the public hearing conducted under (a) of this section;

(4) the decision rendered by the department on the request for reconsideration under (b) of this section; and

(5) the appeal filed by the school district under (c) of this section.

(Eff. 8/31/90, Register 115; am 8/12/93, Register 127; am 4/17/98, Register 146; am 11/28/2019, Register 232)

Authority:	AS 14.11.013	<u>AS 14.11.016</u>	AS 14.11.132
	AS 14.11.015		

4 AAC 31.030(a) is amended to read:

(a) A school district shall submit [THE ELEMENTS OF] a plan for a school capital project, including new construction, additions, demolitions, and rehabilitations, to be undertaken by the school district that is [ARE] to be funded under AS 14.11.011 [AS 14.11.020] or for which reimbursement is to be sought under AS 14.11.100. The elements of the plan must be submitted to the commissioner for the commissioner's review and approval as the elements are developed and before any construction contract solicitation or construction activity is initiated.

(Eff. 3/1/78, Register 65; am 12/2/83, Register 88; am 10/7/95, Register 136; am 4/17/98, Register 146; am 11/28/2019, Register 232)

Authority:	AS 14.07.020	AS 14.11.011	AS 14.11.020
	AS 14.07.060	AS 14.11.013	AS 14.11.100

4 AAC 31.040(a) is amended to read:

(a) Before commencing **construction contract solicitation or** construction activity under **AS 14.11.011** [AS 14.11.020] or **construction contract solicitation or** construction activity for which reimbursement will be sought under AS 14.11.100, a school district or a regional school board shall secure the approval of the commissioner of the documents for the project as follows:

(1) the school district or regional school board shall submit to the commissioner 95 percent construction documents at least 20 work days before a bid invitation is made;

(2) if construction contract bids are to be invited for the project, the school district or regional school board shall submit the construction bid documents, excluding the construction plans and specifications if the 95 percent construction documents submitted under (1) of this subsection were stamped and signed by the professionals in responsible charge, to the commissioner at least five work days before the bid invitation is made;

(3) if the project will not be advertised for bids, the school district or regional school board shall submit the final stamped and signed construction documents to the commissioner no later than 15 work days before commencing each construction phase; and

(4) a municipality or a school district may request, in writing, a waiver to the construction document approval process set out in (1) - (3) of this subsection for a project based on the ability of the municipality or school district to provide a thorough and complete independent review.

(Eff. 3/1/78, Register 65; am 12/2/83, Register 88; am 4/17/98, Register 146; am 11/28/2019, Register 232)

Authority: AS 14.07.020

AS 14.11.011

AS 14.11.100

AS 14.07.060

AS 14.11.020

4 AAC 31.060(i) is amended to read:

(i) Reimbursement for rehabilitation costs under AS 14.11.100 is limited to projects exceeding \$200,000 [\$25,000].

(Eff. 3/1/78, Register 65; am 2/24/83, Register 85; am 12/2/83, Register 88; am 9/12/85, Register 96; am 2/8/86, Register 97; am 5/30/90, Register 114; am 4/17/98, Register 146; am 7/13/2000, Register 155; am 6/17/2010, Register 194; am 11/28/2019, Register 232)

Authority:	AS 14.07.020	AS 14.11.020	AS 14.11.102
	AS 14.07.060	AS 14.11.100	AS 14.11.132
	AS 14.11.011		

4 AAC 31.061(b)(2) is repealed:

(2) repealed 11/28/2019;

(Eff. 9/12/85, Register 96; am 2/8/86, Register 97; am 5/30/90, Register 114; am 9/29/90, Register 115; am 10/7/95, Register 136; am 4/17/98, Register 146; am 11/28/2019, Register 232)

Authority:	AS 14.07.020	AS 14.11.020	AS 14.11.102
	AS 14.07.060	AS 14.11.100	AS 14.11.132

4 AAC 31.064 is amended to read:

4 AAC 31.064. Redirection of bond proceeds. If a municipality has bond proceeds remaining after termination of all design, construction, and equipment contracts for [THE CONSTRUCTION OF] a project approved by the department for debt retirement under 4 AAC

31.060 and by local voters under AS 14.11.100(j), and the municipality seeks to construct a project different from the one approved by the department, the municipality may only receive reimbursement for the project if the new project is approved by the department and

(1) the bond proposition originally approved by the local voters authorized the use of any excess money for school capital projects such as the new project; or

(2) the municipality meets the requirements of AS 14.11.100(j), including the requirement for a municipal election to approve the new use of the money. (Eff. 5/30/90, Register 114; am 11/28/2019, Register 232)

Authority: AS 14.07.060 AS 14.11.100 AS 14.11.132

4 AAC 31.065(a) is amended to read:

(a) If a school district determines that it is necessary to engage the services of a private consultant to provide design, commissioning, or [PROVIDE] construction management services for an educational facility with money provided under AS 14.11.011 - AS 14.11.020, or for a project approved for reimbursement of costs under AS 14.11.100, and the estimated cost of the contract is more than \$50,000, the contract shall be awarded to the most qualified proposer after evaluating proposals submitted in response to an approved solicitation. The selection of the consultant shall be accomplished by soliciting written proposals by advertising at least 21 days before the proposals are due by providing notice through publication in a newspaper of general circulation. The department may approve an alternate means of notice through publication on the Internet if the website has the express purpose of advertising similar solicitations, has unrestricted public access, and is equally likely to reach prospective proposers. [AT LEAST 21 DAYS BEFORE THE PROPOSALS ARE DUE. THE

CONTRACT SHALL BE AWARDED TO THE MOST QUALIFIED OFFEROR, AFTER EVALUATING THE PROPOSALS SUBMITTED.]

4 AAC 31.065 is amended by adding a new subsection to read:

(d) The department may deny or limit its participation in the costs of design, commissioning, or construction management for a project eligible for grant funding under AS 14.11.011 or for reimbursement under AS 14.11.100 if the school district does not comply with the requirements of this section. (Eff. 12/2/83, Register 88; am 8/31/90, Register 115; am 11/28/2019, Register 232)

Authority: AS 14.11.017 AS 14.11.020 AS 14.11.132

4 AAC 31.080(b) is amended to read:

(b) The school district shall **publish** [PROVIDE] **the first** notice of its solicitation **at least 21 days** [BY ADVERTISEMENT IN A NEWSPAPER OF GENERAL CIRCULATION IN THIS STATE AT LEAST THREE TIMES] before the opening of the offers. [THE FIRST PRINTING OF THE ADVERTISEMENT MUST OCCUR AT LEAST 21 DAYS BEFORE OPENING THE OFFERS.] The department may approve a solicitation period shorter than 21 days when written justification submitted by the school district demonstrates that a shorter solicitation period is advantageous for a particular **project** [OFFER] and will result in an adequate number of responses. A school district may provide additional notice by mailing its solicitation to contractors on any list it maintains, and any other means reasonably calculated to provide notice to prospective offerors. **The district shall provide notice of its solicitation by publication at least three times in a newspaper of general circulation in the state. The**

department may approve an alternate means of notice through publication on the Internet if the website has the express purpose of advertising similar solicitations, has unrestricted public access, and is equally likely to reach prospective offerors.

4 AAC 31.080(e) is amended to read:

(e) The department may deny or limit its participation in the costs of construction for a project eligible for grant funding under AS 14.11.011 or for reimbursement under AS 14.11.100 if the school district does not comply with the requirements of this section. [A SCHOOL DISTRICT THAT ENTERS INTO A CONSTRUCTION CONTRACT FOR A PROJECT AUTHORIZED FOR CONSTRUCTION UNDER AS 14.11.020 THAT WAS AWARDED WITHOUT COMPETITIVE SELECTION UNDER THIS SECTION MAY NOT RECEIVE MONEY UNDER ITS PROJECT AGREEMENT FOR THE CONSTRUCTION PHASE OF THE PROJECT.]

4 AAC 31.080(f) is amended to read:

(f) Nothing in this section precludes a school district from using an alternative construction delivery method as defined and described in the *Project Delivery Method Handbook* [PROJECT DELIVERY METHOD HANDBOOK], 2nd edition, September 2017 [NOVEMBER, 2004], adopted by reference, if the department approves the method in advance of any solicitation, the proposed method is in the state's best interest, and the school district concurs in any directives the department makes concerning the type of selection and award of the contract. The department may deny or suspend use of an alternative construction delivery method by a school district if the department concludes, based on substantial evidence, that use

or repeated use of a delivery method by the school district has resulted or will result in limited competition or higher costs.

4 AAC 31.080(g) is amended to read:

(g) A school district may, with prior approval by the department, enter into a lease or purchase agreement for, or accept a donation of, an existing facility or land for use as an education-related facility if

- (1) for the purchase, lease, or accepted donation of an existing facility, a cost saving over new construction is achieved;
- (2) the purchase or lease price is arrived at through impartial negotiation and is supported by a real estate appraisal that meets accepted standards; and
- (3) the purchase, lease, or donation is in the best interests of the state and the school district.

4 AAC 31.080 is amended by adding a new subsection to read:

(i) The department may deny or limit its participation in the costs of a school capital project if the real property for the project is acquired by a school district through purchase, lease, or donation without the approval of the department under (g) of this section. (Eff. 12/2/83, Register 88; am 8/31/90, Register 115; am 4/17/98, Register 146; am 11/20/2005, Register 176; am 11/28/2019, Register 232)

Authority: AS 14.07.060

AS 14.11.020

AS 14.11.132

4 AAC 31.085(a) is amended to read:

(a) The department may dispose of state-owned school buildings and other facilities under this section if it determines that the buildings or facilities are no longer needed to provide the educational program in the community in which they are located. The determination will be made in writing after consultation with the regional educational attendance area (REAA) in which the property is located, and the reasons for the determination will be documented. The department will not make a determination under this section unless the regional school board that was given a use permit under 4 AAC 31.090 for the property provides, in support of the determination, a resolution requesting termination of the use permit and declaring that the property, both land and buildings, is no longer needed for the purpose of providing education services. In addition, the regional school board must give notice of its excess property on a form provided by the department, and must agree that the conditions and responsibilities contained under 4 AAC 31.090 in the use permit will remain valid for a one-year period after the date of the notice or the date of last occupancy, whichever is later, unless the department, in writing, relieves the regional school board of responsibility in whole or in part. **Nothing in this section relieves a regional school board of its ongoing responsibilities or liabilities arising out of its interest in or use or operation of the property.**

(Eff. 10/4/90, Register 115; am 4/17/98, Register 146; am 12/19/2002, Register 164; am 6/17/2010, Register 194; am 11/29/2019, Register 232)

Authority: AS 14.07.030 AS 14.07.060

4 AAC 31.220 is amended to read:

4 AAC 31.220. Proof of insurance. Except for a district that has an authorized self-insurance program under 4 AAC 31.205, each school district shall provide to the department a certificate of insurance, by **July 15** [JULY 1] of each year, that provides notice of the per occurrence and aggregate limits of coverage, and shall provide for 45 days' notice to the department of cancellation, termination, or any material change in policy conditions. (Eff. 8/31/90, Register 115; am 11/29/2019, Register 232)

Authority: AS 14.03.150 AS 14.07.060

4 AAC 31.900(2) is amended to read:

(2) "capital equipment" means built-in and movable equipment used to furnish a newly constructed or rehabilitated space; it includes first-time purchase of library books, reference material, and media to furnish a new or renovated library; it does not include supply items such as textbooks and expendable commodities; the term is further defined in the *Guidelines for School Equipment Purchases*, **2016 edition, adopted by reference in 4 AAC 31.020** [1997 EDITION];

4 AAC 31.900(21) is amended to read:

(21) "school capital project" means a school construction or major maintenance project for which state aid is requested or provided when the costs of the construction or **major** maintenance exceed **\$50,000** [\$25,000];

4 AAC 31.900 is amended by adding a new paragraph to read:

(33) “construction manager” means a private consultant contracted by the school district during any phase of a school capital project to manage the project’s scope, quality, and budget. (Eff. 3/1/78, Register 65; am 6/9/83, Register 86; am 12/2/83, Register 88; am 9/12/85, Register 96; am 8/31/90, Register 115; am 9/29/90, Register 115; am 10/7/95, Register 136; am 4/17/98, Register 146; am 2/18/99, Register 149; am 7/13/2000, Register 155; am 8/23/2001, Register 159; am 12/19/2002, Register 164; am 12/20/2002, Register 164; am 6/17/2010, Register 194; am 11/28/2019, Register 232; am 11/29/2019, Register 232)

Authority:	AS 14.07.020	AS 14.11.020	AS 14.11.102
	AS 14.07.060	AS 14.11.100	AS 14.11.132
	AS 14.11.011		

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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Linda Mattson
Department of Education and Early Development

FROM: April Simpson, Office of the Lieutenant Governor 465.4081 

DATE: October 29, 2019

RE: Filed Permanent Regulations: Department of Education and Early Development
Department of Education and Early Development Regulation re: School Facility
Planning and Construction (4 AAC 31.01 - .900)

Attorney General File:	2018200922
Regulation Filed:	10/29/2019
Effective Date:	11/28/2019
Print:	232, January 2020

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis

4 AAC 31.013(a) is amended to read:

(a) For a district to be eligible for state aid under AS 14.11.011 or AS 14.11.100, the district must have a facility management program that addresses the following five elements of facility and maintenance management:

(1) a formal maintenance management program that records maintenance activities on a work order basis, and tracks the timing and cost, including labor and materials, of maintenance activities in sufficient detail to produce reports of planned and completed work;

(2) an energy management plan that includes

(A) the recording of energy consumption for all utilities on a monthly basis for each building; for facilities constructed before December 15, 2004, a district may record energy consumption for utilities on a monthly basis when multiple buildings are served by one utility plant; and

(B) regular evaluation of the effectiveness of and need for commissioning existing buildings;

(3) a custodial program that includes a schedule of custodial activities for each building based on type of work and scope of effort;

(4) a maintenance training program that specifies training for custodial and maintenance staff and records training received by each person; and

(5) a renewal and replacement schedule that, for each school facility of permanent construction over 1,000 gross square feet, identifies the construction cost of major building systems, including electrical, mechanical, structural and other components; evaluates and

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establishes the life-expectancy of those systems; compares life-expectancy to the age and condition of the systems; and uses the data to forecast a renewal and replacement year and cost for each system.

(Eff. 5/24/2001, Register 158; am 12/19/2002, Register 164; am 12/15/2004, Register 172; am 6/17/2010, Register 194; am 11/28/2019, Register 232)

Authority: AS 14.07.020 AS 14.11.011 AS 14.11.132
AS 14.07.060 AS 14.11.100
Bold/ital.

4 AAC 31.065(a) is amended to read:

(a) If a school district determines that it is necessary to engage the services of a private consultant to provide design, [OR PROVIDE] commissioning, or construction management services for an educational facility with money provided under AS 14.11.011 - AS 14.11.020, or for a project approved for reimbursement of costs under AS 14.11.100, and the estimated cost of the contract is more than \$50,000, the selection of the consultant shall be accomplished by soliciting written proposals by advertising in a newspaper of general circulation at least 21 days before the proposals are due. The contract shall be awarded to the most qualified offeror, after evaluating the proposals submitted.

(Eff. 12/2/83, Register 88; am 8/31/90, Register 115; am 11/28/2019, Register 232)

Authority: AS 14.11.017 AS 14.11.020 AS 14.11.132

4 AAC 31.080 is amended by adding a new subsection to read:

(i) A school district shall perform commissioning of the systems included in a school capital project if the school capital project is an addition of over 5,000 square feet or new construction of an education-related facility that is over 5,000 square feet. If the school capital project is a rehabilitation of an education-related facility over 10,000 square feet, a school district shall perform commissioning of each system substantially upgraded in the school capital project. A school district may perform commissioning for a rehabilitation of an education-related facility for each system impacted by the project but not substantially upgraded in the rehabilitation. Commissioning required under this subsection must include the services of a commissioning agent. Commissioning permitted under this subsection for a system that is impacted by a rehabilitation project but not substantially upgraded in the rehabilitation may use the services of a commissioning agent or may use a qualified facility professional, including a school district employee. The cost of commissioning, including the cost of a commissioning agent, required or permitted under this subsection is an allowable cost of school construction. (Eff. 12/2/83, Register 88; am 8/31/90, Register 115; am 4/17/98, Register 146; am 11/20/2005, Register 176; am 11/20/2011, Register 232)

Authority: AS 14.07.060

AS 14.11.020

AS 14.11.132

4 AAC 31.900 is amended by adding new paragraphs to read:

(31) “commissioning” means functional testing activities for a mechanical, electrical, fuel oil, controls, or building envelope system to ensure that a facility or a system operates as the owner and designers intended and that prepares an owner to efficiently operate its systems and equipment;

(32) “commissioning agent” means an individual who is certified with a recognized standards organization approved by the department to provide commissioning services, who may be an employee of the school district or an independent design consultant hired on behalf of the school district to

(A) create a commissioning plan, checklists, and functional performance tests for each commissioned system;

(B) coordinate the commissioning team for the mechanical, electrical, fuel oil, controls, and building envelope systems;

(C) coordinate the work of the construction contractor, school district, and design team as it pertains to the commissioning process;

(D) witness the functional performance testing;

(E) assist in resolution of issues found during commissioning; and

(F) verify the training of owner maintenance personnel on commissioned systems. (Eff. 3/1/78, Register 65; am 6/9/83, Register 86; am 12/2/83, Register 88; am 9/12/85, Register 96; am 8/31/90, Register 115; am 9/29/90, Register 115; am 10/7/95, Register 136; am 4/17/98, Register 146; am 2/18/99, Register 149; am 7/13/2000, Register 155; am 8/23/2001, Register 159; am 12/19/2002, Register 164; am 12/20/2002, Register 164; am 6/17/2010, Register 194; am 11 / 24 / 2014, Register 232)

Authority:	AS 14.07.020	AS 14.11.020	AS 14.11.102
	AS 14.07.060	AS 14.11.100	AS 14.11.132
	AS 14.11.011		

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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Linda Mattson
Department of Education and Early Development

FROM: April Simpson, Office of the Lieutenant Governor
465.4081 

DATE: October 29, 2019

RE: Filed Permanent Regulations: Department of Education and Early Development
Department of Education and Early Development Regulation re: Teacher Certification
(4 AAC 12.310, .372)

Attorney General File:	2019200176
Regulation Filed:	10/29/2019
Effective Date:	11/28/2019
Print:	232, January 2020

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis

4 AAC 12.310(d) is amended by adding new paragraphs to read:

(14) the Pennsylvania Pre-service Academic Performance Assessment with qualifying scores of

(A) reading: 220;

(B) mathematics: 193;

(C) writing: 220;

(15) the Missouri Educator Gateway Assessments with qualifying scores of

(A) reading: 183;

(B) mathematics: 180;

(C) writing: 220;

(16) the Illinois Test of Academic Proficiency with qualifying score of 240 on ~~each of our~~ ^{for} subtests, reading comprehension, language arts, mathematics, and writing.

4 AAC 12.310 is amended by adding a new subsection to read:

(f) An applicant who has qualified for certification with the certifying agency of another state may satisfy the requirement of AS 14.20.020(i) by providing to the department the applicant's qualifying scores ^{each} on the competency examination ~~or examinations~~ required by the certifying agency of the other state. (Eff. 9/29/2005, Register 175; am 9/30/2005, Register 175; am 12/21/2007, Register 184; am 6/27/2014, Register 210; am 4/24/2016, Register 218; am 6/1/2018, Register 226; 11 / 20 / 2019, Register 232)

Authority: AS 14.07.060 AS 14.20.020 AS 14.20.030

AS 14.20.010

The introductory language of 4 AAC 12.372(a) is amended to read:

(a) The commissioner may issue a limited career or technical education certificate (Type M), valid for five years [ONE YEAR], in a specialty area of a career or technical education course if the commissioner determines that

...

4 AAC 12.372(b)(2) is amended to read:

(2) possess an industry certification in the career or technical specialty, or have completed four or more years of full-time work experience in the specialty, for which not more than two years of formal training at a trade school, technical institute, or similar institution may be substituted; in this paragraph, "industry certification" means a credential [CREDENTIALING], license [licensing], or certification that permits a person to work in the career or technical specialty.

4 AAC 12.372(c) is repealed:

(c) Repealed 11/28/2019.

^{Not}
~~[Language to be repealed]~~ (C) THE DEPARTMENT MAY EXTEND THE INITIAL ONE-YEAR LIMITED CAREER OR TECHNICAL CERTIFICATE ISSUED UNDER (A) OF THIS SECTION FOR AN ADDITIONAL FOUR YEARS IF THE APPLICANT DEMONSTRATES THAT THE APPLICANT HAS MET THE REQUIREMENTS OF 4 AAC 12.310 FOR BASIC SKILLS IN READING, WRITING, AND MATHEMATICS AND THE SCHOOL DISTRICT CERTIFIES ON A FORM PROVIDED BY THE DEPARTMENT THAT THE APPLICANT HAS DEMONSTRATED CLASSROOM INSTRUCTION, CURRICULUM, AND

Register 232, January ²⁰²⁰ ~~2019~~

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ASSESSMENT SKILLS. A TEACHER WHO DOES NOT MEET THE REQUIREMENTS OF 4 AAC 12.310 IS NOT ELIGIBLE TO HAVE THE LIMITED CERTIFICATE EXTENDED OR RENEWED UNTIL THE REQUIREMENT IS MET.]

The introductory language of 4 AAC 12.372(d) is amended to read:

A limited career or technical education certificate issued under (a) [(c)] of this section may be renewed any number of times for five years upon submission to the department of

...

(Eff. 3/28/2012, Register 201; am 4/24/2016, Register 218; 11 / 28 / 2019, Register 232)

Authority: AS 14.07.060 AS 14.20.020 AS 14.20.025

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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Linda Mattson
Department of Education and Early Development

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: November 8, 2019

RE: Filed Permanent Regulations: Department of Education and Early Development

Department of Education and Early Development Regulation re: K-12 Science,
Computer Science, Digital Literacy, and Content and Performance Standards (4 AAC
04.140)

Attorney General File:	2019200281, 2019200280 and 2019200279
Regulation Filed:	11/8/2019
Effective Date:	12/8/2019
Print:	232, January 2020

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis

4 AAC 04.030 is amended to read:

4 AAC 04.030. Subjects. A goal of the state public school system is to provide a working knowledge of

((bold slash))

(1) English/language arts;

(2) mathematics;

(3) science;

(4) geography;

(5) history;

(6) skills for a healthy life;

(7) government and citizenship;

(8) [FINE] arts;

(9) computer science and digital literacy[TECHNOLOGY]; [AND]

(10) world languages;[.]

~~or~~ (11) library ^{and} information literacy; and

(12) cultural standards. ←

(Eff. 6/24/93, Register 126; ^{am} 12 / 0 / 2019, Register 232)

Authority: AS 14.03.015 AS 14.07.060 AS 14.07.165
AS 14.07.020

4 AAC 04.140(a) is amended to read:

^{ALL CAPS}

(a) The [content] standards for English/language arts and mathematics, as set out in the department's publication *Alaska English/Language Arts and Mathematics Standards*, revised as of June 2012, are adopted by reference. The standards for science, as set out in the

department's publication, *Science Standards for Alaska*, revised as of March 2019, are adopted by reference. The standards for computer science, as set out in the department's publication, *Alaska Computer Science Standards*, revised as of March 2019, are adopted by reference. The standards for digital literacy, as set out in the department's publication, *Alaska Digital Literacy Standards*, revised as of March 2019, are adopted by reference. The content standards for [SCIENCE,] geography, government and citizenship, history, Alaska history, skills for a healthy life, arts, world languages, [TECHNOLOGY,] and employability, as set out in the department's publication *Alaska Standards: Content and Performance Standards for Alaska Students*, revised as of March 2019 [2016], are adopted by reference.

(Eff. 3/2/2000, Register 153; am 11/10/2005, Register 176; am 5/18/2006, Register 178; am 8/18/2010, Register 195; am 10/16/2012, Register 204; am 9/29/2016, Register 219; ^{am} 12 / 8 / 2019, Register 232)

Authority: AS 14.03.015 AS 14.07.020 AS 14.07.165
AS 14.03.120 AS 14.07.060

Editor's note: Copies of the publications *Alaska English/Language Arts and Mathematics Standards*; *Science Standards for Alaska*; *Alaska Computer Science Standards*; *Alaska Digital Literacy Standards*; *Alaska Standards: Content and Performance Standards for Alaska Students*; *Alaska Physical Education Standards*, adopted by reference in 4 AAC 04.140, may be

obtained by writing to the Department of Education and Early Development, 801 West 10th Street, Suite 200, P.O. Box 110500, Juneau, Alaska 99811-0500 or at www.eed.state.ak.us/standards/.

4 AAC 04.180 is amended to read:

4 AAC 04.180. Student cultural standards. The cultural standards for students in the state, as set out in the department's publication entitled *Alaska Standards: Content and Performance Standards for Alaska Students*, [AS] revised as of March 2019 [2006], are adopted by reference. (Eff. 5/14/2000, Register 154; am 11/10/2005, Register 176; am 5/18/2006, Register 178; ^{am} 12 / 8 / 2019, Register 232)

Authority: AS 14.03.015 AS 14.07.020 AS 14.07.165
AS 14.03.120 AS 14.07.060

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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Linda Mattson
Department of Education and Early Development

FROM: April Simpson, Office of the Lieutenant Governor 465.4081 

DATE: October 29, 2019

RE: Filed Permanent Regulations: Department of Education and Early Development
Department of Education and Early Development Regulation re: Accountability System
Sub-Interval Scores (4 AAC 06.822(b))

Attorney General File:	2019200168
Regulation Filed:	10/29/2019
Effective Date:	11/28/2019
Print:	232, January 2020

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis

4 AAC 06.822(b) is amended to read:

(b) The department will assign the appropriate sub-level to each student based on the student's score. For purposes of determining whether students made adequate growth on the English language arts or mathematics test under 4 AAC 06.737, the subject matter achievement levels defined in 4 AAC 06.739 are divided into sub-levels of advanced high, advanced low, proficient high, proficient low, below proficient high, below proficient low, far below proficient high, and far below proficient low. The sub-levels are set out in the following tables:

English/language arts

Achievement Level	Grade 3	Grade 4	Grade 5	Grade 6	Grade 7	Grade 8	Grade 9
Advanced High	558-600	554-600	564-600	567-600	562-600	557-600	551-600
Advanced Low	542-557	538-553	548-563	551-566	546-561	541-556	535-550
Proficient High	521-541	519-537	524-547	526-550	523-545	521-540	518-534
Proficient Low	500-520	500-518	500-523	500-525	500-522	500-520	500-517
Below Proficient High	482-499	484-499	482-499	487-499	486-499	485-499	486-499
Below Proficient Low	464-481	468-483	464-481	473-486	471-485	469-484	471-485
Far Below Proficient High	448-463	452-467	448-463	457-472	455-470	453-468	455-470
Far Below Proficient Low	400-447	400-451	400-447	400-456	400-454	400-452	400-454

Math

Achievement Level	Grade 3	Grade 4	Grade 5	Grade 6	Grade 7	Grade 8	Grade 9
Advanced High	570-600	575-600	584-600	570-600	575-600	578-600	578-600 [586-600]
Advanced Low	554-569	559-574	568-583	554-569	559-574	562-577	562-577 [570-585]
Proficient High	527-553	530-558	534-567	527-553	530-558	531-561	531-561 [535-569]
Proficient Low	500-526	500-529	500-533	500-526	500-529	500-530	500-530 [500-534]
Below Proficient High	479-499	480-499	481-499	477-499	476-499	474-499	476-499 [475-499]
Below Proficient Low	458-478	460-479	462-480	454-476	451-475	448-473	451-475 [450-474]
Far Below Proficient High	442-457	444-459	446-461	438-453	435-450	432-447	435-450 [434-449]
Far Below Proficient Low	400-441	400-443	400-445	400-437	400-434	400-431	400-434 [400-433]

(Eff. 10/20/2018, Register 228; ^{am} 11 / 20 / 2019, Register 232)

Authority: AS 14.03.123 AS 14.07.060 AS 14.50.080
AS 14.07.020

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

THE ALASKA LEGISLATIVE COUNCIL,)
On Behalf of THE ALASKA STATE)
LEGISLATURE,)

Plaintiff,)

v.)

HONORABLE MICHAEL J. DUNLEAVY,)
In His Official Capacity as Governor of the)
State of Alaska, KELLY TSHIBAKA, In Her)
Official Capacity as Commissioner of)
Administration for the State of Alaska, and)
MICHAEL JOHNSON, In his Official)
Capacity as Commissioner of Education and)
Early Development for the State of Alaska,)

Defendants,)

and)

COALITION FOR EDUCATION)
EQUITY,)

Intervenor.)

Filed in the Trial Courts
STATE OF ALASKA, FIRST DISTRICT
AT JUNEAU

NOV 07 2019

By AS Deputy

Case No. 1JU-19-753CI

**ORDER RE: CROSS MOTIONS
FOR SUMMARY JUDGMENT**

Before the court are cross motions for summary judgment filed by the parties pursuant to their agreement which was adopted by the court on August 20, 2019. Oral argument was held on October 4, 2019.

This case requires the court to determine whether the Governor of Alaska, acting in his official capacity and through his co-defendants (collectively, "Defendants"), has a duty under the Alaska Constitution to execute funding appropriations passed by the Thirtieth Legislature in 2018 and signed into law by the prior sitting governor in 2018 despite delayed effective dates of July 1, 2019 (the first day of Fiscal Year ("FY") 2020), which is the second forthcoming fiscal year from the date the appropriations were enacted. The Alaska Legislative Counsel ("Plaintiff") and the intervenor the Coalition for Education Equity ("Intervenor") argue that he does. The Defendants argue there is no such obligation because the appropriations violate the state constitution due to their delayed effective dates.

The Plaintiff filed its *Complaint for Declaratory and Injunctive Relief and an Accounting* on July 16, 2019. The complaint alleges that HB 287 was passed by the legislature and signed by

then-Governor Bill Walker on May 4, 2018. HB 287, which in relevant part became SLA 2018, Ch. 6, §§ 4, 5(c), and 5(d), had effective dates of July 1, 2019 under § 8, which is the first day of FY2020. The law appropriates funding for public school districts and for transportation of students as well as one-time additional money for public schools for FY2020. The complaint further alleges that the Defendants failed to execute or disburse the appropriated funds for public school districts for FY2020, which would prevent public schools from operating during the 2019–2020 school year.¹

The Plaintiff brought three claims for relief, one for each of the three appropriations in SLA 2018, Ch. 6 at issue: § 4, § 5(c), and § 5(d). The claims each allege that the Defendants failed to execute the appropriations pursuant to AS 14.17.610(a) (distribution of state school aid); that this failure infringes on the legislature’s ability to maintain a system of public schools under Art. VII, § 1 of the Alaska Constitution; that this failure infringes upon the legislature’s power of appropriation under Art. IX, § 13; that this failure violates the separation of powers doctrine; and that this failure violates the governor’s duty to faithfully execute the laws under Art. III, § 16.

All parties agree that the case poses purely legal questions and that no issues of material fact exist that impede resolution by summary judgment. The Plaintiff argues that the Defendants bear the burden—and are unable to meet the burden—of demonstrating that the appropriations in SLA 2018, Ch. 6 violate the Alaska Constitution. They argue that the appropriations are entitled to a presumption of constitutionality and thus the Defendants are duty bound to execute them pursuant to statute. The Defendants contend that the appropriations violate the Alaska Constitution and thus the governor has no duty to execute them. They argue that the appropriations at issue are unconstitutional dedications, violate the state’s annual appropriation model, violate the legislature’s power of appropriation, and violate the governor’s veto power.

Summary judgment is proper if there is no genuine factual dispute and the moving party is entitled to judgment as a matter of law.²

¹ As part of a stipulation entered into by the parties and approved by this court on July 16, 2019, funding for education for the 2019-2020 school year is being expended during the pendency of this suit.

² *Devine v. Great Divide Ins. Co.*, 350 P.3d 782, 785-86 (Alaska 2015).

A party raising a constitutional challenge to a statute bears the burden of demonstrating the constitutional violation. A presumption of constitutionality applies and doubts are resolved in favor of constitutionality.³ The Plaintiff seeks relief requiring the Defendants to execute the appropriations at issue, and the Defendants contend that the appropriations violate certain provisions of the Alaska Constitution. Because the Defendants are raising a constitutional challenge to the Ch. 6, SLA 2018 appropriations, they bear the burden to overcome the presumption of the statute's constitutionality.

A court's analysis of a constitutional provision begins with, and remains grounded in, the words of the provision itself.⁴ The court is not vested with the authority to add missing terms or hypothesize differently worded provisions to reach a particular result.⁵ The court instead must look to the plain meaning and purpose of the provision and to the intent of the framers.⁶ The court must give effect to every word, phrase, and clause of the Alaska Constitution. Seemingly conflicting parts are to be harmonized, if possible, so that effect can be given to all parts of the constitution.⁷ An argument by either party that similar appropriations as those at issue in this case have or have not been employed previously has no bearing on the court's analysis; what matters is what the Alaska Constitution says.⁸

The Plaintiff and Intervenor assert that the legislature validly enacted the appropriations pursuant to Art. IX, § 13 and Art. VII, § 1 ("Public Education Clause") of the Alaska Constitution. The legislature's power of appropriation under Art. IX, § 13 provides that, "[n]o money shall be withdrawn from the treasury except in accordance with appropriations made by law. . . ." The Public Education Clause provides that, "[t]he legislature shall by general law establish and maintain a system of public schools open to all children of the State." The clause specifically imposes a duty upon the state legislature, and it confers upon Alaska school age children a right to education.⁹ The legislature bears the sole responsibility and authority to maintain the public school system in Alaska.¹⁰ Therefore,

³ *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 192 (Alaska 2007).

⁴ *Wielechowski v. State*, 403 P.3d 1141, 1146 (Alaska 2017).

⁵ *Id.*

⁶ *Id.*

⁷ *Alaska Civil Liberties Union v. State*, 122 P.3d 781, 786 (Alaska 2005).

⁸ *Wielechowski*, 403 P.3d at 1152.

⁹ *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793, 799 (Alaska 1975).

¹⁰ *Macanley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971).

both clauses together vest the legislature with the prerogative and responsibility to appropriate money for the purpose of maintaining a system of public education in Alaska.

The legislature may enact an appropriation “for a public purpose,”¹¹ and a finding by the legislature that an appropriation is for a public purpose is valid unless it is arbitrary and without any reasonable basis in fact.¹² The parties do not dispute that the SLA 2018, Ch. 6 appropriations at issue are rational and for a valid purpose—maintaining public education in Alaska for FY2020. The legislature determined that the passage of the state’s operating budget late in the annual legislative session posed a specific problem for the Alaska public education system because it provided insufficient notice to school districts of the extent of their budget for the forthcoming school years. The legislature determined that insufficient notice resulted in budget uncertainty, which in turn diminished the public school system’s effectiveness in attracting and retaining qualified educators for each forthcoming school year.

To solve this apparent problem the legislature passed HB 287, which was signed into law as SLA 2018, Ch. 6 early in the legislative session on May 4, 2018.¹³ The statute

¹¹ Alaska Constitution, Article IX, § 6.

¹² *DeArmond v. Alaska State Dev. Corp.*, 376 P.2d 717, 721 (Alaska 1962).

¹³ SLA 2018, Ch. 6 states in relevant part:

Sec. 4. DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT. The sum of \$30,000,000 is appropriated from the general fund to the Department of Education and Early Development to be distributed as grants to school districts according to the average daily membership for each district adjusted under AS 14.17.410(b)(1)(A) – (D) for the fiscal year ending June 30, 2020.

Sec. 5. Fund Capitalization. (a) The amount necessary to fund the total amount for the fiscal year ending June 30, 2019, of state aid calculated under the public school funding formula under AS 14.17.410(b), estimated to be \$1,189,677,400, is appropriated from the general fund to the public education fund (AS 14.17.300).

(b) The amount necessary, estimated to be \$78,184,600, to fund transportation of students under AS 14.09.010 for the fiscal year ending June 30, 2019, is appropriated from the general fund to the public education fund (AS 14.17.300).

(c) The amount necessary to fund the total amount for the fiscal year ending June 30, 2020, of state aid calculated under the public school funding formula under AS 14.17.410(b) is appropriated from the general fund to the public education fund (AS 14.17.300).

(d) The amount necessary to fund transportation of students under AS 14.09.010 for the fiscal year ending June 30, 2020, is appropriated from the general fund to the public education fund (AS 14.17.300).

Sec. 6. LAPSE. The appropriations made in sec. 5 of this Act are for the capitalization of a fund and do not lapse.

Sec. 7. CONTINGENCY. The appropriations made in secs. 4 and 5(c) and (d) of this Act are contingent on passage by the Thirtieth Alaska State Legislature and enactment into law of a version of Senate Bill 26.

appropriates the money necessary for public school funding and transportation of pupils from the general fund to the public education fund for FY2019.¹⁴ §§ 4, 5(c), and (d) of the statute—the appropriations at issue—appropriate \$30 million from the general fund to the department of education and early development as grants and appropriates the money necessary for public school funding and transportation of students for FY2020,¹⁵ with delayed effective dates of July 1, 2019.¹⁶

The forward-funding of public education intended to be achieved with the delayed effective dates of July 1, 2019 for the May, 2018 appropriations was an effort by the legislature to provide advanced budget notice and certainty to public school districts for the 2019–2020 school year. The legislature’s chosen solution to the actual or perceived problem in public education is rational. The Alaska Supreme Court has explained that the statutory structure for funding public education in Alaska is established pursuant to the legislature’s mandate and responsibility to maintain a system of public education under the Public Education Clause.¹⁷ Therefore, because the SLA 2018, Ch. 6 forward-funding appropriations were passed for the purpose of addressing an apparent problem with public education funding, the appropriations were enacted in furtherance of fulfilling the legislature’s mandate to maintain a system of public education under the Public Education Clause.

Art. IX, § 7 (“Dedicated Funds Clause”) of the Alaska Constitution provides that, “the proceeds of any state tax or license shall not be dedicated to any special purpose” The *raison d’être* of the Dedicated Funds Clause is to prevent the fiscal evil that results from the diminishment of the governor’s and legislature’s control over the finances of the state by requiring the legislature to decide funding priorities annually on the merits of the various proposals presented.¹⁸ When the legislature commits a particular public revenue source by appropriation to be spent only for a particular funding object, the legislature violates the

Sec. 8. Sections 4 and 5(c) and (d) of this Act take effect July 1, 2019.

Sec. 9. Except as provided in sec. 8 of this Act, this Act takes effect July 1, 2018.

¹⁴ SLA 2018, Ch. 6, §§ 5(a), 5(b).

¹⁵ SLA 2018, Ch. 6, §§ 4, 5(c), 5(d).

¹⁶ SLA 2018, Ch. 6, § 8.

¹⁷ See, *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 87–88 (Alaska 2016).

¹⁸ *Sonneman v. Hickel*, 836 P.2d 936, 938 (Alaska 1992). See, also, *State v. Ketchikan Gateway Borough*, 366 P.3d at 101; *State v. Alex*, 646 P.2d 203, 209–10 (Alaska 1982) (citing ALASKA STATEHOOD COMMITTEE, CONSTITUTIONAL STUDIES pt. IX, 29–30 (1955), and 6 ALASKA CONST.CONV. PROCEED., app. V, at 111).

Dedicated Funds Clause because the funding object is no longer required to compete along with everything else for the right to receive the funds from the revenue source.¹⁹ When the legislature makes a prohibited dedication it diminishes the control over the free and unimpeded disposition of those funds from the legislature in future years despite the continuing power of the legislature to amend or repeal the dedication.

An appropriation or statute can impermissibly dedicate funds in various ways,²⁰ but only the dedication of a particular source of public revenue (“tax, license, rental, sale, bonus-royalty, royalty, or whatever”) is a direct violation of the Dedicated Funds Clause.²¹ Our supreme court has explained how the clause was limited by amendment at the Constitutional Convention to allow for the setting up of certain special funds such as sinking funds for the repayment of bonds, but to prohibit the earmarking of any special tax to that sinking fund.²² Thus, the clause in its final form was intended to allow necessary dedication of funds once they were received and placed in the general fund.²³

This interpretation appears to lead to the conclusion that general treasury revenue—but not a particular revenue source—can be appropriated to a fund for expenditure without further appropriation and without directly violating the Dedicated Funds Clause. By logical extension, forward-funding appropriations with delayed effective dates of the second forthcoming fiscal year from the date they were enacted, like those at issue here, do not directly implicate the Dedicated Funds Clause. The appropriations do not earmark a particular public revenue source, which would impact future revenue, but instead appropriate treasury revenue after it is deposited in the general fund. Therefore, the appropriations at issue do not directly violate the Dedicated Funds Clause.

The Defendants contend that the forward-funding appropriations at issue violate the state’s so-called annual appropriation model because the appropriations take effect in the second forthcoming fiscal year (on July 1, 2019) from the date they were enacted (on May 4, 2018). The Defendants point to Art IX, § 12, which requires the governor to submit to the legislature “a budget for the next fiscal year setting forth all proposed expenditures and

¹⁹ *Sonneman*, 836 P.2d at 940.

²⁰ *State v. Ketchikan Gateway Borough*, 366 P.3d at 99; *see, generally*, *Sonneman*, 836 P.2d 936; *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162 (Alaska 2009).

²¹ *Alex*, 646 P.2d at 210; *Myers v. Alaska Hous. Fin. Corp.*, 68 P.3d 386, 392-93 (Alaska 2003).

²² *Alex*, 646 P.2d at 210.

²³ *Id.*

anticipated income of all departments, offices, and agencies of the State.” The Defendants point to Art. IX, § 8, which generally prohibits the State from contracting state debt (with some exceptions). The Defendants point to Art. IX, § 10, which permits the State to borrow money to fulfill appropriations for any fiscal year in anticipation of the collection of revenues for that same year, “but all debt so contracted shall be paid before the end of the next fiscal year.” The Defendants also point to Art. IX, § 17(d), which mandates that the amount of money in the general fund available for appropriation at the end of a fiscal year be deposited in the constitutional budget reserve fund until any prior appropriation from that fund is repaid.

The Defendants argue that a requirement that appropriations take effect the following fiscal year from the date they are enacted is either expressly provided for, or implied, by the aforementioned clauses of the Alaska Constitution. However, none of the above clauses—either alone or in conjunction with each other—explicitly mandates this. Nor do the clauses implicitly prohibit a delayed appropriation effective date of the second forthcoming fiscal year from the date of enactment. At most, the clauses, read together, express an aspiration that the legislature appropriate general revenue to be expended during the forthcoming fiscal year. The SLA 2018, Ch. 6 appropriations at issue are presumed constitutional and the court is absolutely restricted from reading into the constitution absent or missing language.²⁴

The Dedicated Funds Clause seeks to preserve an annual appropriation model which assumes that not only will the legislature remain free to appropriate all funds for any purpose on an annual basis, but that government departments will not be restricted in requesting funds from all sources.²⁵ But as explained above, the appropriations at issue do not directly violate the prohibition on the dedication or earmarking of a particular revenue source, which is the particular fiscal evil for which the clause was adopted.

Moreover, the SLA 2018, Ch. 6 appropriations were 2018 appropriations because they authorized the expenditure of money from the general fund on their July 1, 2019 effective dates without further legislative action.²⁶ Accordingly, the sitting governor had the opportunity to recommend the alternative expenditure of the appropriated funds by

²⁴ See notes 4 and 5, *supra*.

²⁵ *Sonneman*, 836 P.2d at 940; *Myers*, 68 P.3d at 389.

²⁶ See, *Hickel v. Comper*, 874 P.2d 922, 933 (Alaska 1994).

submitting the governor's annual budget under Art. IX, § 12, and had the opportunity to veto the appropriations after they were passed by the legislature in 2018 under Art. II, § 15. Because SLA 2018, Ch. 6 consists of 2018 appropriations, had the governor vetoed the appropriations the legislature would have had to overcome the vetoes by a vote of three-fourths of its membership for them to become law.²⁷ Therefore, the 2018 appropriations at issue, despite their delayed effective dates of July 1, 2019, are entirely consistent with the Alaska Constitution's annual appropriation model.

It is possible to say that the 2018 appropriations curtailed to a degree the 2019 legislature's control over the appropriated money from the general fund. But the 2019 legislature certainly had the power to amend or repeal the appropriations at issue before their effective dates with a simple majority vote in both houses.²⁸ Even so, to the extent that the appropriations could be said to undermine the spirit of the state's annual appropriation model embodied in the Dedicated Funds Clause, the model's spirit is outweighed by the legislature's power of appropriation and its specific prerogative and responsibility to maintain the Alaska public education system under the Public Education Clause. This is consistent with the Alaska Supreme Court's reasoning and conclusion in *Myers* where it had to weigh multiple competing values in assessing whether an appropriation indirectly contravened the Dedicated Funds Clause. The *Myers* court ultimately determined that the prohibition on dedicated funds had to yield to the legislature's power to manage and appropriate the state's assets.²⁹

While Alaska's constitutional framers sought to protect state control over state revenue and to ensure legislative flexibility over the disposition of revenue sources, and to limit certain powers and to avoid certain pitfalls, it is also apparent that the framers did not intend to prevent the state from experimenting and adapting to changing circumstances.³⁰ Simply put, the forward-funding appropriations here do not constrict the legislature's power over free disposition of state funds to such a degree that they exceed the legislature's freedom to experiment and adapt to the changing circumstances and hurdles of the day,

²⁷ AK CONST. Art. II, § 16.

²⁸ AK CONST. Art. II, § 14. Although this power is seemingly identical to the legislature's power to amend or repeal a prohibited dedication made in a previous year.

²⁹ *Myers*, 68 P.3d at 391-94.

³⁰ See, *State v. Ketchikan Gateway Borough*, 366 P.3d at 94.

particularly in the field of public education. The presumption of constitutionality that attaches to the appropriations at issue has not been rebutted.

This conclusion is necessarily limited to the particular appropriations at issue, which have delayed effective dates of the second fiscal year from the date that they were enacted, were passed for the rational purpose of furthering the legislature's mandate to maintain a system of public education, and do not impact future revenue proceeds from a particular revenue stream. This court is free to express no opinion on the validity of any other appropriation not directly at issue.³¹ The appropriations here do no violence to Alaska's annual appropriation model.

The Defendants argue that the appropriations subvert the governor's veto power and the legislature's power of appropriation because if they are upheld, nothing would prevent a politically aligned legislature and governor from passing budgets for many years into the future knowing that so long as future legislatures and governors were not similar in agreement the original budget decisions would stick. Art. IX, § 13 provides in pertinent part, in relation to the legislature's appropriations power, that, "[n]o money shall be withdrawn from the treasury except in accordance with appropriations made by law." Art. II, § 15 describes the governor's veto power by explaining in part that, "[t]he governor may veto bills passed by the legislature. He may, by veto, strike or reduce items in appropriation bills." The plain language of both clauses does not explicitly or implicitly prohibit the type of appropriations at issue here.

The parties do not dispute that the Thirtieth Legislature in 2018 passed the appropriations in HB 287 pursuant to its power of appropriation and that the governor in 2018 had the opportunity to veto the appropriations but chose not to. Accordingly, the appropriations do not violate either the legislature's power of appropriation or the governor's veto power.

Art. III, § 16 of the Alaska Constitution vests the governor with the responsibility "for the faithful execution of the laws." The Defendants thus have a constitutional obligation to execute the appropriations in SLA 2018, Ch. 6, § 4, § 5(c), and § 5(d), and

³¹ See, e.g., *Myers*, 68 P.3d at 393. The court declines to decide an issue not before it, including in relation to forward-funding for multiple or many years into the future.

therefore must execute them accordingly.³² To do otherwise infringes upon the legislature's power of appropriation and duty to fund public education under the Public Education Clause.

The court grants the relief requested by the Plaintiff, including a declaratory judgment that the Defendants have violated their duty to faithfully execute the law by failing to execute the forward-funding appropriations at issue according to the statutory funding procedures; an injunction mandating that the Defendants disburse the funds in issue in accordance with the appropriations; an injunction prohibiting the Defendants from impounding or withholding money from the appropriations; and an order requiring the Defendants to provide to the Plaintiff an accounting of all of the expenditures of money pursuant to the appropriations.

Thus, the Plaintiff's and the Intervenor's motions for summary judgment are **GRANTED** and the Defendants' motion for summary judgment is **DENIED**.

DATED this 7th day of November 2019 at Juneau, Alaska.


Daniel Schally
Superior Court Judge



CERTIFICATION
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³² The Defendants also have a statutory obligation to execute the appropriations pursuant to AS 14.17.610 and AS 14.17.410.



LAWS OF ALASKA

2018

Source

HCS CSSB 104(FIN) am H

Chapter No.

AN ACT

Relating to the duties of the Department of Education and Early Development; relating to the duties of the state Board of Education and Early Development; relating to school curricula; relating to a system for managing student information and records related to individualized education programs for children with disabilities; establishing the marijuana education and treatment fund; and relating to the duties of the Department of Health and Social Services to administer a comprehensive marijuana use education and treatment program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Relating to the duties of the Department of Education and Early Development; relating to the
2 duties of the state Board of Education and Early Development; relating to school curricula;
3 relating to a system for managing student information and records related to individualized
4 education programs for children with disabilities; establishing the marijuana education and
5 treatment fund; and relating to the duties of the Department of Health and Social Services to
6 administer a comprehensive marijuana use education and treatment program.

7

8 * **Section 1.** AS 14.07.030 is amended by adding a new subsection to read:

9 (b) The department may not require a school district to review textbooks,
10 instructional materials, or curricula more frequently than once every 10 years.

11 * **Sec. 2.** AS 14.07.165 is amended by adding a new subsection to read:

12 (c) Every five years, the board shall review the mathematics and English and

1 language arts curricula used in the state to ensure the curricula are still effective and
2 are being taught using best practices.

3 * **Sec. 3.** AS 14.07 is amended by adding new sections to read:

4 **Sec. 14.07.180. Curricula approval and review; pilot program; incentives.**

5 (a) Notwithstanding any other provision of law, the board shall establish standards and
6 a procedure for the review, ranking, and approval of mathematics and English and
7 language arts curricula for school districts to use in each grade level as provided in this
8 section. The board may include curricula delivered through virtual education in the
9 standards and procedure established under this subsection.

10 (b) The department, in consultation with school districts, shall review
11 mathematics and English and language arts curricula used in schools in the state and in
12 other states and countries and may include in the review curricula delivered through
13 virtual education. Not later than July 1, 2019, the department shall identify the best
14 mathematics and English and language arts curricula and the best teaching practices
15 for each of the curricula. The department may identify the best mathematics and
16 English and language arts curricula delivered through virtual education.

17 (c) The department shall submit the curricula and teaching practices that the
18 department identifies as the best under (b) of this section to the board for approval,
19 including evidence supporting the department's selection, if the department concludes
20 that the curricula and best practices

21 (1) are appropriate;

22 (2) are in compliance with the nondiscrimination standards established
23 under AS 14.18.060(b);

24 (3) are aligned with state education standards; and

25 (4) result in improved academic achievement for students.

26 (d) The board may approve curricula submitted under (c) of this section if the
27 curricula are consistent with the standards established by the board under (a) of this
28 section. The department shall place the curricula approved by the board into two
29 categories as follows:

30 (1) incentivized curricula for the best curricula for each subject, based
31 on evidence provided to the department; the department may place not more than two

1 curricula in this category for each subject;

2 (2) designated effective curricula for the curricula for each subject that
3 are not incentivized curricula but that the department finds appropriate and effective
4 based on factual and other evidence provided to the department.

5 (e) A three-year pilot program is established in the department, starting in the
6 2019-2020 school year, to test the appropriateness and effectiveness of the
7 incentivized curricula approved under (d) of this section. In conducting the program,
8 the department shall

9 (1) establish an application process for school districts to apply for
10 participation in the program;

11 (2) select four school districts from those that apply to participate in
12 the program, including two rural and two urban school districts, basing the selection of
13 the school districts on the readiness and capacity of each district;

14 (3) assign to each participating school district the incentivized
15 mathematics curriculum or the incentivized English and language arts curriculum; the
16 department shall assign the mathematics curriculum to one rural and one urban school
17 district and the English and language arts curriculum to one rural and one urban school
18 district;

19 (4) starting in the 2019-2020 school year, distribute incentive
20 payments, not to exceed \$10,000,000 in total, to the four school districts to assist with
21 the purchase and implementation of the curricula, including best teaching practices
22 and professional development, and purchase of instructional materials.

23 (f) At the completion of the pilot program under (e) of this section, the
24 department shall

25 (1) if the department finds that the incentivized curricula tested in the
26 pilot program are appropriate and effective, submit the findings to the board; and

27 (2) if the board finds that the curricula tested in the pilot program are
28 appropriate and effective, make the curricula and one-time incentive payments under
29 (g) of this section available to all school districts starting in the 2022-2023 school year
30 and ending in the 2024-2025 school year.

31 (g) The department may distribute an incentive payment available to a school

1 district in an amount that is not more than the school district's ADM multiplied by
2 150, subject to availability of funding, if the governing body of the school district

3 (1) selects one of the incentivized curricula for implementation in the
4 school district in an eligible school year under (f)(2) of this section;

5 (2) requests an incentive payment from the department;

6 (3) has not previously implemented the incentivized curricula; and

7 (4) demonstrates to the satisfaction of the department the readiness and
8 capacity of the school district to implement the curricula.

9 (h) In addition to any unexpended money under (e)(4) of this section, the
10 department may distribute not more than \$9,500,000 in incentive payments under (f)
11 and (g) of this section.

12 (i) The department shall publish on the department's Internet website and
13 make available to the public

14 (1) all curricula used by school districts in the state for all subjects,
15 whether or not the curricula are approved; and

16 (2) the curricula approved under (d) of this section.

17 (j) The department shall submit an electronic report to the legislature and
18 make the report available to the public on the department's Internet website. The report
19 must provide information on the pilot program and the curricula that each school
20 district has adopted. On or before January 15, 2019, and each year thereafter, the
21 department shall submit the report required under this subsection to the senate
22 secretary and the chief clerk of the house of representatives and notify the legislature
23 that the report is available.

24 (k) Each school district shall submit to the department the relevant
25 information needed for the department to carry out its duties under this section.

26 (l) Payments for curricula implementation under the pilot program described
27 in (e) of this section and incentive payments under (f) and (g) of this section are
28 subject to appropriation. If insufficient funding is available to distribute payments to
29 all school districts that request funding in a year under (g) of this section, the
30 department may distribute payments to the remaining school districts the following
31 school year.

1 (m) If the applications for participation in the pilot program are insufficient to
2 meet the requirements under (e) of this section, the department may select four school
3 districts from those that apply, taking into consideration geographical diversity.

4 (n) Beginning with the 2025-2026 school year, the department may distribute
5 incentive payments to school districts that use curricula reviewed and approved by the
6 board under AS 14.07.165(c). The department may provide incentive payments,
7 subject to appropriation, to school districts based on the readiness and capacity of the
8 school district as determined by the department.

9 (o) In this section,

10 (1) "rural" has the meaning given in AS 14.43.700;

11 (2) "school district" has the meaning given in AS 14.30.350;

12 (3) "school district's ADM" has the meaning given to "district ADM"
13 in AS 14.17.990;

14 (4) "urban" means a community other than a community described in
15 AS 14.43.700;

16 (5) "virtual education" means instruction delivered through
17 telecommunications or other digital or electronic methods.

18 **Sec. 14.07.182. Curriculum improvement and best practices fund.** (a) The
19 curriculum improvement and best practices fund is established. The fund consists of
20 appropriations, not to exceed \$19,500,000, for distribution to school districts.

21 (b) Money appropriated to the fund may be expended by the department as
22 provided under AS 14.07.180, without further appropriation.

23 (c) Nothing in this section creates a dedicated fund.

24 (d) Appropriations to the fund do not lapse.

25 * **Sec. 4.** AS 14.08.111 is amended to read:

26 **Sec. 14.08.111. Duties.** A regional school board shall

27 (1) provide, during the school term of each year, an educational
28 program for each school age child who is enrolled in or a resident of the district;

29 (2) develop a philosophy of education, principles, and goals for its
30 schools;

31 (3) approve the employment of the professional administrators,

1 teachers, and noncertificated personnel necessary to operate its schools;

2 (4) establish the salaries to be paid its employees;

3 (5) designate the employees authorized to direct disbursements from
4 the school funds of the board;

5 (6) submit the reports prescribed for all school districts;

6 (7) provide for an annual audit in accordance with AS 14.14.050;

7 (8) provide custodial services and routine maintenance of school
8 buildings and facilities;

9 (9) establish procedures for the review and selection of all textbooks
10 and instructional materials **at least once every 10 years**, including textbooks and
11 curriculum materials for statewide correspondence programs, before they are
12 introduced into the school curriculum; the review includes a review for violations of
13 AS 14.18.060; nothing in this paragraph precludes a correspondence study student, or
14 the parent or guardian of a correspondence study student, from privately obtaining or
15 using textbooks or curriculum material not provided by the school district;

16 (10) provide prospective employees with information relating to the
17 availability and cost of housing in rural areas to which they might be assigned, and,
18 when possible, assist them in locating housing; however, nothing in this paragraph
19 requires a regional school board to provide teacher housing, whether owned, leased, or
20 rented or otherwise provided by the regional educational attendance area, nor does it
21 require the board to engage in a subsidy program of any kind with respect to teacher
22 housing;

23 (11) train persons required to report under AS 47.17.020, in the
24 recognition and reporting of child abuse, neglect, and sexual abuse of a minor; and

25 (12) establish procedures for providing the training under
26 AS 14.18.060, AS 14.20.149, 14.20.680, AS 14.30.355, 14.30.356, 14.30.362,
27 AS 14.33.100, AS 18.66.310, and AS 47.17.022; the procedures established under this
28 paragraph must include a training schedule that ensures that not less than 50 percent of
29 the total certificated staff employed by the district receive all of the training not less
30 than every two years and that all of the certificated staff employed by the district
31 receive all of the training not less than every four years.

1 * **Sec. 5.** AS 14.14.090 is amended to read:

2 **Sec. 14.14.090. Duties of school boards.** In addition to other duties, a school
3 board shall

4 (1) determine and disburse the total amount to be made available for
5 compensation of all school employees and administrative officers;

6 (2) provide for, during the school term of each year, an educational
7 program for each school age child who is enrolled in or a resident of the district;

8 (3) withhold the salary for the last month of service of a teacher or
9 administrator until the teacher or administrator has submitted all summaries, statistics,
10 and reports that the school board may require by bylaws;

11 (4) transmit, when required by the assembly or council but not more
12 often than once a month, a summary report and statement of money expended;

13 (5) keep the minutes of meetings and a record of all proceedings of the
14 school board in a pertinent form;

15 (6) keep the records and files of the school board open to inspection by
16 the public at the principal administrative office of the district during reasonable
17 business hours;

18 (7) establish procedures for the review and selection of all textbooks
19 and instructional materials **at least once every 10 years**, including textbooks and
20 curriculum materials for statewide correspondence programs, before they are
21 introduced into the school curriculum; the review includes a review for violations of
22 AS 14.18.060; nothing in this paragraph precludes a correspondence study student, or
23 the parent or guardian of a correspondence study student, from privately obtaining or
24 using textbooks or curriculum material not provided by the school district;

25 (8) provide prospective employees with information relating to the
26 availability and cost of housing in rural areas to which they might be assigned, and,
27 when possible, assist them in locating housing; however, nothing in this paragraph
28 requires a school district to provide teacher housing, whether district owned, leased,
29 rented, or through other means, nor does it require a school board to engage in a
30 subsidy program of any kind regarding teacher housing;

31 (9) train persons required to report under AS 47.17.020, in the

1 recognition and reporting of child abuse, neglect, and sexual abuse of a minor;

2 (10) provide for the development and implementation of a preventive
3 maintenance program for school facilities; in this paragraph, "preventive maintenance"
4 means scheduled maintenance actions that prevent the premature failure or extend the
5 useful life of a facility, or a facility's systems and components, and that are cost-
6 effective on a life-cycle basis;

7 (11) establish procedures for providing the training under
8 AS 14.18.060, AS 14.20.149, 14.20.680, AS 14.30.355, 14.30.356, 14.30.362,
9 AS 14.33.100, AS 18.66.310, and AS 47.17.022; the procedures established under this
10 paragraph must include a training schedule that ensures that not less than 50 percent of
11 the total certificated staff employed by the district receive all of the training not less
12 than every two years and that all of the certificated staff employed by the district
13 receive all of the training not less than every four years.

14 * **Sec. 6.** AS 14.16.020 is amended to read:

15 **Sec. 14.16.020. Operation of state boarding schools.** In the management of
16 state boarding schools, the board shall

17 (1) adopt a philosophy of education for state boarding schools;

18 (2) approve the employment of personnel necessary to operate state
19 boarding schools;

20 (3) establish the salaries and benefits to be paid teachers, excluding
21 administrators;

22 (4) designate the employees authorized to direct disbursements from
23 the money appropriated for the operation of state boarding schools and for the
24 construction of facilities;

25 (5) provide custodial services and routine maintenance of physical
26 facilities;

27 (6) establish procedures for the development and implementation of
28 curriculum and the selection and use of textbooks and instructional materials; **the**
29 **procedures must require a review of textbooks and instructional materials at**
30 **least once every 10 years;**

31 (7) prescribe health evaluation and placement screening programs for

1 newly admitted students;

2 (8) establish procedures for staff evaluation; and

3 (9) establish procedures for providing the training under AS 14.18.060,
4 AS 14.20.149, 14.20.680, AS 14.30.355, 14.30.356, 14.30.362, AS 14.33.100,
5 AS 18.66.310, and AS 47.17.022; the procedures established under this paragraph
6 must include a training schedule that ensures that not less than 50 percent of the total
7 certificated staff employed by the district receive all of the training not less than every
8 two years and that all of the certificated staff employed by the district receive all of the
9 training not less than every four years.

10 * **Sec. 7.** AS 14.30.285 is amended by adding a new subsection to read:

11 (h) The department shall make available to school districts an electronic
12 system for managing student information and tracking records relating to
13 individualized education programs for children with disabilities. The system must, to
14 the extent permitted by federal law, allow school districts to transfer special education
15 records for a student when the student transfers to a different school district. If the
16 governing body of a school district elects to use the system selected by the department,
17 the department shall provide the school district with the system, including any
18 software necessary to implement the system, at no charge to the school district. The
19 department may not require a school district to use the system selected by the
20 department.

21 * **Sec. 8.** AS 43.61.010(d) is amended to read:

22 (d) The legislature may use the annual estimated balance in the **recidivism**
23 **reduction** fund to make appropriations to the Department of Corrections, the
24 Department of Health and Social Services, or the Department of Public Safety for
25 recidivism reduction programs.

26 * **Sec. 9.** AS 43.61.010 is amended by adding a new subsection to read:

27 (f) The marijuana education and treatment fund is established in the general
28 fund. In addition to the accounting under (c) of this section, the Department of
29 Administration shall separately account for 25 percent of the tax collected under this
30 section and deposit it into the marijuana education and treatment fund. The
31 Department of Administration shall deposit interest earned on the fund into the general

1 fund. Money in the fund does not lapse. The legislature may use the annual estimated
2 balance in the fund to make appropriations to the Department of Health and Social
3 Services for the comprehensive marijuana use education and treatment program
4 established under AS 44.29.020(a)(17).

5 * **Sec. 10.** AS 44.29.020(a) is amended to read:

6 (a) The Department of Health and Social Services shall administer the state
7 programs of public health and social services, including

- 8 (1) maternal and child health services;
- 9 (2) preventive medical services;
- 10 (3) public health nursing services;
- 11 (4) nutrition services;
- 12 (5) health education;
- 13 (6) laboratories;
- 14 (7) mental health treatment and diagnosis;
- 15 (8) management of state institutions, except for adult penal institutions;
- 16 (9) medical facilities;
- 17 (10) adult public assistance;
- 18 (11) **the** Alaska temporary assistance program;
- 19 (12) child welfare services;
- 20 (13) general relief;
- 21 (14) a comprehensive smoking education, tobacco use prevention, and
22 tobacco control program; to the maximum extent possible, the department shall
23 administer the program required under this paragraph by grant **to** or contract with one
24 or more organizations in the state; the department's program must include

25 (A) a community-based tobacco use prevention and cessation
26 component addressing the needs of youth and adults that includes use of
27 cessation aids such as a nicotine patch or a nicotine gum tobacco substitute;

28 (B) youth-based efforts that involve youth in the design and
29 implementation of tobacco control efforts;

30 (C) anti-tobacco counter-marketing targeting both youth and
31 adult populations designed to communicate messages to help prevent youth

1 initiation of tobacco use, promote cessation among tobacco users, and educate
2 the public about the lethal effects of exposure to secondhand smoke;

3 (D) tobacco use surveys of youth and adult populations
4 concerning knowledge, awareness, attitude, and use of tobacco products; and

5 (E) an enforcement component;

6 (15) the Alaska Pioneers' Home and the Alaska Veterans' Home;

7 (16) licensure and regulation of child care facilities;

8 (17) a comprehensive marijuana use education and treatment
9 program; to the extent possible, the department shall administer the program
10 required under this paragraph by grant to or contract with one or more
11 organizations in the state; the department's program must include

12 (A) a community-based marijuana misuse prevention
13 component; the community-based component must provide for a youth
14 services grant program to

15 (i) reduce initiation and promote cessation of
16 marijuana use by youth, reduce youth access to marijuana
17 products, and reduce exposure of youth to impaired driving
18 dangers related to marijuana use;

19 (ii) provide recreational, educational, and character-
20 building programs for youth outside school hours; and

21 (iii) address marijuana use prevention through
22 outcome-based curricula, adult and peer mentoring, and
23 opportunities for positive, prosocial leisure and recreational
24 activities;

25 (B) marijuana public education designed to communicate
26 messages to help prevent youth initiation of marijuana use, educate the
27 public about the effects of marijuana use, and educate the public about
28 marijuana laws;

29 (C) surveys of

30 (i) youth and adult populations concerning
31 knowledge, awareness, attitude, and use of marijuana products;

1 (ii) the need for trained professionals working in
2 organizations described in this paragraph;

3 (D) the development of plans to address the need for
4 trained professionals and to assist in implementing a training program for
5 those professionals;

6 (E) monitoring of population health status related to the
7 consequences of marijuana use; and

8 (F) substance abuse screening, brief intervention, and
9 referral to treatment.

10 * **Sec. 11.** AS 14.07.180(e), 14.07.180(f), 14.07.180(g), 14.07.180(h), 14.07.180(j),
11 14.07.180(l), and 14.07.180(m) are repealed July 1, 2025.

12 * **Sec. 12.** 4 AAC 05.080(e) is annulled.