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

EDWARD ALEXANDER, JOSH ANDREWS, SHELBY BECK ANDREWS, and CAREY CARPENTER, Plaintiffs, v. STATE OF ALASKA, DEPARTMENT OF EDUCATION & EARLY DEVELOPMENT, COMMISSIONER DEENA BISHOP, in her official Capacity, ANCHORAGE SCHOOL DISTRICT, MATANUSKA-SUSITNA BOROUGH SCHOOL DISTRICT, DENALI BOROUGH SCHOOL DISTRICT, and GALENA CITY SCHOOL DISTRICT, Defendants, v. ANDREA MOCERI, THERESA BROOKS, and BRANDY PENNINGTON Intervenor-Defendants.	)	3AN-23-04309CI

ORDER DENYING INTERVENORS' MOTION TO DISMISS

Alaska Statutes 14.03.300-.310 govern the use of student allotments for correspondence study programs. The statutes allow entities that maintain a correspondence

study program to provide parents with allotments to "purchase nonsectarian services and materials from a public, private, or religious organization" if certain conditions are met.[1]

Plaintiffs, four parents of school aged children attending Alaska public schools, filed this suit in January of 2023 to challenge the constitutionality of those statutes.[2] Parents of children who receive correspondence allotment funds intervened to defend their interests. Those Intervenors motioned to dismiss Plaintiffs' amended complaint on April 14, 2025.

As explained below, the Court DENIES Intervenors' motion. Litigation of this case requires a factual record establishing actual authorized allotment expenditures.

I. Background

In proceedings under their original complaint, Plaintiffs argued that the statutes violate article VII, section 1 of the Alaska Constitution, which prohibits using "public funds for the direct benefit of any religious or other private educational institution."[3] Plaintiffs argued that the statutes were facially unconstitutional.[4] Superior court Judge Zeman agreed, striking down the statutes in their entirety.[5]

The Alaska Supreme Court issued a written opinion addressing Plaintiffs' original complaint on March 28, 2025. There, the Supreme Court reversed Judge Zeman and found AS 14.03.300-.310 facially constitutional.[6] Although requested by Plaintiffs and

[1] AS 14.03.310 (a), (b).
[2] Complaint at ¶ 57.
[3] *Alexander v. Acting Com'r Heidi Teshner*, 2024 WL 3204137 at *5; Alaska Const. art. VII. § 1.
[4] *Id.* at *5-6.
[5] *Id.* at *14.
[6] *Dep't of Educ. & Early Dev. v. Alexander*, 566 P.3d 268, 285 (Alaska 2025).

Intervenors, the Supreme Court declined to consider an "as-applied"[7] challenge to the statutes' constitutionality because (1) "it is unclear whether the statutes actually permit this use of allotment funds" and (2) "the school districts that allegedly approved this use of allotment funds were not made parties to the lawsuit."[8] The Supreme Court remanded for joinder of the proper parties and for the superior court to perform the necessary statutory interpretation.

Plaintiffs added Defendants Anchorage, Denali Borough, Matanuska-Susitna Borough, and Galena City School Districts on March 10, 2025. Plaintiffs also amended their complaint to bring this as-applied challenge.[9] They now ask the Court to declare unconstitutional the use of allotment funds toward private educational institution tuition, classes, or educational materials.[10]

As noted above, Intervenors filed a Motion to Dismiss Plaintiffs' Amended Complaint. Defendants Denali Borough, Matanuska-Susitna Borough, and Galena City School Districts ("the Districts") filed a limited opposition to Intervenors' Motion to Dismiss on May 12, 2025. Plaintiffs filed their opposition on May 20, 2025. The State Department of Education & Early Development ("DEED") also filed their response that same day.

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[7] "Courts may find statutes 'unconstitutional as applied or unconstitutional on their face.' Ruling a statute facially unconstitutional strikes the statute down in full. Ruling a statute unconstitutional as applied 'simply means that under the facts of the case application of the statute is unconstitutional.' Under other circumstances, however, the statute may be applied constitutionally. *Id.* (citing *State v. Am. Civil Liberties Union (ACLU) of Alaska*, 204 P.3d 364, 372 (Alaska 2009); *State v. Planned Parenthood of the Great Nw.*, 436 P.3d 984, 1000 (Alaska 2019)).

[8] *Id.* at 271.

[9] First Amended Complaint at VI. ¶1.

[10] *Id.*

II. Legal Standard

"An Alaska Civil Rule 12(b)(6) motion to dismiss is 'grounded on the failure to state a claim upon which relief can be granted. Such a motion tests the legal sufficiency of the complaint's allegations.'"[11] Alaska courts have "consistently held that dismissals under Rule 12(b)(6) 'should be granted only if it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of the claims that would entitle them to relief.'"[12] "Motions to dismiss are viewed with disfavor and should rarely be granted."[13]

III. Discussion

Plaintiffs, DEED, and the Districts oppose dismissal because they believe more factual development is necessary for the Court to decide the case.

The Districts oppose Intervenors' Motion to Dismiss because there remain no facts about specific allotment fund uses.[14] The Districts assert that they "intend to show their correspondence programs do not directly benefit private institutions."[15] To that end, they argue that Alaska's test for unconstitutional "direct benefit" funding under Article VII, section 1 of the state constitution requires a factual record.[16]

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[11] *Alleva v. Municipality of Anchorage*, 467 P.3d 1083, 1087 (Alaska 2020) (quoting *Dworkin v. First Nat'l Bank of Fairbanks*, 444 P.2d 777, 779 (Alaska 1968)).
[12] *Forrer v. State*, 471 P.3d 569, 583 (Alaska 2020) (quoting *Robinson v. Alaska Hous. Fin. Corp.*, 442 P.3d 763, 768 (Alaska 2019)).
[13] *Kollodge v. State*, 757 P.2d 1024, 1026 (Alaska 1988) (quoting *Linck v. Barokas & Martin*, 667 P.2d 171, 173 (Alaska 1983)).
[14] Limited Opposition to Intervenors' Motion to Dismiss at 2-3 (filed May 12, 2025).
[15] *Id.* at 4.
[16] *Id.* at 5-7 (citing *Sheldon Jackson College v. State of Alaska*, 599 P.2d 127 (1979)).

The State Department of Education & Early Development ("DEED") agrees that the case requires factual development.[17] DEED asserts that "[i]f there are no uses actually in dispute, or the only uses actually in dispute fail for some other reason, this Court need never reach the questions that Plaintiffs present."[18] DEED argues that the only proven uses may violate the statute.[19] If the uses violate the statute, then the Court may not need to decide their constitutionality.[20]

Plaintiffs argue that "the [Supreme] Court remanded this case so that school districts authorizing uses of allotments could be joined as parties, and a factual record could be developed regarding approved uses of allotments at private schools for Plaintiffs' as-applied challenge."[21] Per Plaintiffs, [g]iven that the Alaska Supreme Court has already explicitly declined to make the very legal rulings requested by Intervenors in a factual vacuum – instead remanding this case for joinder of school districts and development of the record – Intervenors' Motion to Dismiss should be denied."[22]

Intervenors counter that factual development is not necessary because "the only relevant questions are legal."[23] They claim that "[t]he high court remanded for two purposes: (1) to have the trial court consider 'whether the allotment statute permits using allotment funds for private school tuition,' and (2) to join school districts as parties."[24]

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[17] Response to Intervenors' Motion to Dismiss at 3 (filed May 20, 2025).
[18] *Id.*
[19] *Id.* at 5.
[20] *Id.*
[21] Plaintiffs' Opp. At 3.
[22] *Id.* at 3-4.
[23] Intervenors' Reply in Support of Motion to Dismiss at 8.
[24] *Id.* at 9 (citing *Alexander*, 566 P.3d at 286).

The Court agrees with the Districts, Plaintiffs, and DEED. The Court cannot decide this case without a factual record of authorized allotments for correspondence program expenses. An as-applied challenge requires the Court to apply the particular facts of the case.[25] The Court cannot rule on this challenge without those facts.

In their opinion, the Supreme Court declined to consider the constitutional challenge as-applied to the use of allotment funds to pay students' tuition for full-time enrollment in private school.[26] The as-applied challenge was not appropriate because the procedural rules require joinder of a party to a lawsuit when "complete relief" cannot be afforded without that party, and "complete relief cannot be afforded until a school district that has actually authorized the spending Alexander claims is unconstitutional is joined to the lawsuit."[27] Without a school district that actually authorized the challenged uses of allotment funds, there was no "actual controversy" permitting declaratory judgment.[28] Additionally, the court could not afford injunctive relief when the school districts whose rights would be impacted were not party to the case.[29]

Intervenors' partial quotation of the Supreme Court's opinion leaves out a significant reason for joining the districts: to litigate an "actual controversy."[30] This Court may not issue a declaratory judgment without that "actual controversy."[31] An "actual

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[25] *ACLU of Alaska*, 204 P.3d at 372.
[26] *Alexander*, 566 P.3d at 285.
[27] *Id.* at 286-87.
[28] *Id.* (citing Alaska R. Civ. P. 19(a)). Deciding the as-applied challenge was not appropriate even though the Intervenor-parents provided affidavits that attested to using the funds in the challenged manner. *Id.* at 285.
[29] *Id.* At 286-87 (citing *Lee v. Konrad*, 337 P.3d 510, 517 (Alaska 2014)).
[30] *Alexander*, 566 P.3d at 287.
[31] *Id.* at 286.

controversy," means that "the conduct of one party adversely affects the interests of another."[32] In this case, the conduct adversely affecting Plaintiffs is authorization of certain allotment expenditures. There is no controversy without those expenditures, and without a controversy the Court cannot provide complete relief. In other words, "complete relief cannot be afforded until a school district that has actually authorized the spending… is joined to the lawsuit."[33] Thus, complete relief requires actual authorized spending. Although school districts are now party to the case, the record contains little evidence of actual expenditures. The Court cannot provide complete relief in this as-applied challenge until there are proven expenditures for the parties to litigate.

In addition to the current lack of controversy, some of the districts ask for factual development to support their argument for the constitutionality of actual expenditures. This argument further supports development of the factual record. The Supreme Court required addition of school districts because an injunction is an "extraordinary equitable remedy," and enjoining the spending would directly impact the districts.[34] Now that districts are party to the case, some of them ask for factual development to explain why the Court should not enjoin their actions. It makes no sense to add the parties because they will be impacted by an injunction and then ignore those parties' argument against that remedy. Doing so would disregard the Supreme Court's purpose in remanding this case.

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[32] *Id.* at 286 (quoting *Keen v. Ruddy*, 784 P.2d 653, 656 (Alaska 1989)).
[33] *Id.*
[34] *Id.* at 286-87.

IV. Conclusion

Intervenors' Motion to Dismiss Plaintiffs' Amended Complaint is DENIED. Discovery will take place so that the parties can litigate actual allotment fund expenditures for this as-applied challenge to AS 14.03.300-.310.

Counsel shall meet and confer in an attempt to enter into a stipulation for relevant discovery deadlines. The parties shall file a joint stipulation within 30 days of this Order. If the parties are unable to reach agreement related to discovery deadlines, then counsel shall move for a Status Hearing within 30 days of this Order.

DONE this 29th day of September 2025, at Anchorage, Alaska.

Laura Hartz
Superior Court Judge

Alaska Trial Courts

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