

In the Supreme Court of the State of Alaska

State of Alaska, Department of	)	
Education & Early Development, and	)	Supreme Court Nos. S-19083/S-19113
Commissioner Deena M. Bishop, in an	)	
official capacity,	)	Superior Court No. 3AN-23-04309 CI
	)	
Appellants,	)	Summary Order
and	)	
	)	Date of Order: June 28, 2024
Andrea Mocerri, Theresa Brooks, and	)	
Brandy Pennington,	)	
	)	
Intervenor-	)	
Appellants,	)	
v.	)	
	)	
Edward Alexander, Josh Andrews,	)	
Shelby Beck Andrews, and Carey	)	
Carpenter,	)	
	)	
Appellees.	)	

Before: Maassen, Chief Justice, Borghesan, Henderson, and Pate,
Justices, and Winfree, Senior Justice.*

Before us is an expedited appeal concerning the constitutionality of AS 14.03.300-.310. These statutes govern correspondence study programs offered by local school districts.¹ The statutes permit school districts to approve an allotment of

* Sitting by assignment made under article IV, section 11 of the Alaska Constitution and Alaska Administrative Rule 23(a).

¹ AS 14.03.300-.310. These statutes also permit the State Department of Education and Early Development to offer a correspondence study program, but the record in this case indicates it does not currently offer one.

~~State of Alaska, DEED~~ et al. v. Edward Alexander, et al.

State of Alaska, DEED et al. v. Edward Alexander, et al.

Supreme Court Nos. S-19083/S-19113

Order of 6/28/2024

Page 3

Second, we decline to decide an as-applied constitutional challenge when the entity that took the allegedly unconstitutional action is not a party to the lawsuit. Although Alaska courts have authority to issue declaratory judgments, they may do so only when there is an “actual controversy” between the parties,¹⁴ which means “that the conduct of one party adversely affects the interest of another.”¹⁵ Under AS 14.13.300-.310 it is school districts, not the State, that design students’ individual learning plans and authorize particular uses of allotment funds to purchase services and materials in connection with those plans. For this reason, Alexander’s claim that certain uses of allotment funds are unconstitutional cannot proceed without joining a school district that has authorized those uses of allotment funds.¹⁶ The superior court rejected this argument, which was error. We therefore vacate the court’s denial of the State’s motion to dismiss Alexander’s as-applied challenge and remand for further proceedings. To proceed with an as-applied challenge on remand, Alexander must decide which particular uses of allotments he believes are unconstitutional and then identify and join the school district or districts that authorized that spending.¹⁷

Because we do not decide whether any particular use of allotment funds

¹⁴ AS 22.10.020(g); *Jefferson v. Asplund*, 458 P.2d 995, 998-99 (Alaska 1969).

¹⁵ *Keen v. Ruddy*, 784 P.2d 653, 656 (Alaska 1989) (citing *Bowers Off. Prods. v. Univ. of Alaska*, 755 P.2d 1095, 1097 (Alaska 1988)).

¹⁶ See Alaska R. Civ. P. 19(a) (“A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) . . . complete relief cannot be accorded among those already parties.”).

¹⁷ Our decision leaves open the question of whether the State itself is a necessary party to an as-applied challenge to AS 14.03.300-.310.

State of Alaska, DEED et al. v. Edward Alexander, et al.

Supreme Court Nos. S-19083/S-19113

Order of 6/28/2024

Page 7

violates the Alaska Constitution's prohibition on direct benefits to private educational institutions, we decline to decide at this time Mocerio's argument that the United States Constitution *requires* school districts to permit the use of allotment funds to pay private school tuition. But this argument remains part of the litigation on remand, and the superior court must address it.

A handwritten signature in cursive script, reading "m. montgomery". The signature is written in dark ink on a light-colored background.

State of Alaska, DEED et al. v. Edward Alexander, et al.
Supreme Court Nos. S-