

## MEMORANDUM

To: Sherry Biggs, Borough Clerk  
Fr: Blaine D. Gilman, Esq.  
Dt: July 13, 2006  
Re: Educational Funding Lawsuit

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I have been asked to provide information and background materials for the joint work session between the KPBA and KPBSD scheduled for July 25, 2006 to discuss the merits of an educational funding lawsuit. Howard Trickey of Jermain, Dunnagan & Owens will be at the joint work session to discuss the possibility of the Borough joining Kristine Moore, et al vs. State of Alaska, Case No. 3AN-04-9756. This case is scheduled to go to trial in October of this year. The Plaintiffs need further funds to pursue the lawsuit. Mr. Trickey will be asking the borough to join the lawsuit and to contribute somewhere between \$400,000 to \$450,000 for the trial stage. Their primary argument is that Alaska schools provide an inadequate education to children because education is not funded at an adequate level. This argument is based from the "Education Clause" set out in Article VII, Section 1 of the Alaska Constitution. I have attached to this memo the three (3) primary orders in the Moore case. Together, they provide a very comprehensive view of the Moore case.

The Moore case is about inadequate funding. It is not about inequitable funding. The Moore plaintiffs are not pursuing an equal protection cause of action under Article 1, Section 1 of the Alaska constitution. The KPBA, however, may very well have an equal protection argument regarding educational funding. Under the area cost differential, the KPBSD is funded at a rate as if it only had urban schools. However, the KPBSD has a number of rural schools. The most recent ISER report commissioned by the legislature demonstrates that the KPBSD is being under-funded by approximately \$10,000,000 each year. This combined with the fact that the KPBA has always funded to the cap makes it impossible for the KPBA to make up for this inequitable funding through using more borough funds. Consequently, our children suffer.

Under an "Education Clause" argument, the goal is to make the educational funding pie larger. Under an "Equal Protection Clause" argument, the goal is to get a larger piece of the existing educational funding.

If the KPBA wants to pursue a lawsuit against the State of Alaska for inequitable funding under the equal protection clause of the Alaska constitution, parents with children in the school system would have to bring the lawsuit. The law is clear that the KPBA or the KPBSD does not have standing to bring an equal protection lawsuit. Parents with children in the school system would have standing to bring the lawsuit; however, they would not have the resources to fund the lawsuit. As a practical matter, the KPBA would be required to fund it.

Hopefully, this information is helpful to the KPBA and KPBSD in making the decision on how to proceed.

Note from Borough Attorney Colette Thompson: The Kenai Peninsula Borough Legal Department is researching whether borough funds can be used to pay legal expenses of private parties in this case.