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GEOFFREY G. CURRALL - 1944-2016

October 14, 2022

Via Email: michael.robbins@k21schools.org

Michael Robbins, Superintendent
Ketchikan Gateway Borough School District
333 Schoenbar Road
Ketchikan, Alaska 99901

Re: SPED Services and COVID Para costs

Dear Superintendent Robbins,

The Tongass School of Arts and Sciences (TSAS) Academic Policy Committee (APC) has asked me to follow up on their prior efforts to resolve a dispute regarding interpretation of the Memorandum of Agreement (MOA) between the charter schools and the Ketchikan Gateway Borough School District (District) and to correct District errors in charging expenses to the TSAS budget. In July TSAS sent you a letter detailing these issues. Subsequently they were discussed in an August 24, 2022, meeting with APC representatives, and addressed in a follow up August 29, 2022, email from the APC president Tina Peckham to you and board member Mattson. The errors remain unresolved.

Specifically, the APC is requesting that: 1) the District credit the FY 2023 TSAS budget \$70,745.74 which represents improperly charged Special Education (SPED) costs and Covid aid costs as detailed below; and, 2) the District not make the same error and use care to properly allocate the SPED costs for the current fiscal year as called for in the 2021 School Board approved MOA.

The specific credit to the TSAS operating budget requested consists of \$59,269.60 in SPED services costs which were charged to the TSAS operating budget rather than to the District SPED budget, and \$10,130.58 in COVID paraprofessional (para) costs which were charged to the TSAS operating budget rather than to the District fund for COVID paras.

The SPED Services

The SPED portion consisted of the costs of an employee hired by the District to provide SPED services. The MOA is clear that SPED and intensive needs expenses are allocated across the District on a per capita basis. (See Section 4a. of the MOA providing a list of direct cost services to be billed as a Districtwide expense.) Accordingly, employees providing SPED services are to be paid as a Districtwide expense out of the District funds, regardless of how the costs are coded.

Here, the individual was hired as a SPED educator. It was discovered that she did not yet have the proper certification, so the District elected to have her perform the SPED services with supervision rather than replacing her with a certified SPED teacher. She continued to perform exclusively providing SPED services with a certified person providing oversight. Whether certified or not, it is clear that the work was SPED work, and was work that is to be paid by the District under the MOA. Rather than pay the costs of this employee from District funds, the costs were withdrawn from TSAS operating budget accounts. These funds were improperly withdrawn from the TSAS operating budget account and must be returned.

KEENE & CURRALL

Michael Robbins
October 14, 2022
Page 2

The May 6, 2022, email from Katie Parrott to Brenda Loughman and Scott Huff stated that the coding of the employee's time to TSAS rather than SPED was because, "A teacher who cannot be placed in a Special Education position cannot then be knowingly coded as a SPED cost, so this is why [name omitted] was coded to regular instruction services." This is not a valid justification for multiple reasons.

First, regular instruction educators are selected and assigned by the charter school, in this case TSAS. The District's hiring and coding of an instructor as regular instruction without affording TSAS the discretion to choose not to hire, or to choose how to assign regular instruction, is contrary to TSAS's right under its contract with the District which allows TSAS to make its own staffing decisions. This District action is inconsistent with the APC's right and responsibility to manage their budget and carry out their educational program.

Second, in addition to the District requiring employment of an instructor assigned to tasks which are not chosen by the APC as part of TSAS academic program, this mischarging simultaneously denies TSAS the benefits of a certificated SPED instructor at District expense, an educational benefit to which TSAS and its students are entitled under the MOA and the TSAS contract, both of which provide for TSAS to utilize District services for SPED with the District deciding how SPED services will be provided. The District hires and pays staff providing SPED services. The employee is, in fact, providing SPED services. It makes no difference that the District may have difficulty "coding" this work to SPED expense. The District's coding difficulties do not justify charging the expense to TSAS's operating budget as an instructional expense rather than the District bearing the expense of employees providing SPED services. This improper coding reduced the operating funds available for TSAS directed instruction without any opportunity for the APC to exercise its discretion to choose to allocate TSAS instruction funds in this manner or to choose the instructional program to be provided by this employee.

In Alaska contracts, such as the TSAS contract with the District and the MOA concerning budgeting, are subject to an implied covenant of good faith and fair dealing. This requires that the parties to a contract proceed in good faith, and that neither party will do anything which will injure the right of the other to receive the benefits of the agreement. Here, the District's manner of providing SPED services and charging them to the TSAS budget as regular instruction expenses violates the covenant of good faith and fair dealing. It improperly places SPED expenses as an additional cost on the regular instruction budget, contrary to both the letter and intent of the parties' agreements.

The COVID Para Services

The COVID para position was a position where the District agreed to pay for two COVID building paras and one COVID health aide, in each of the schools. These positions were to be paid from District funds, and not by individual school budgets. One of the COVID para positions at TSAS was filled by a person who resigned December, 2021. It was difficult to find a replacement hire, so TSAS used a substitute. We understand that where the para is out sick the substitute assignment program codes payment of the substitute to the same fund, and would have had this substitute paid from the same COVID funding source. However, where the position is vacant due to resignation, and a substitute is used, the coding does not go to the proper COVID fund source. The District charged the costs of the replacement COVID para to the TSAS operating budget as a substitute and not to the COVID para fund maintained by the District. The APC maintains that this was improper because the position remained a COVID para position, and thus should have been charged the same as the COVID para positions in other schools.

As with the entitlement to SPED services at District expense, the COVID para program provided by the District was to provide staffing for special purposes at District expense. When the staffing was

KEENE & CURRALL

Michael Robbins
October 14, 2022
Page 3

provided, and performing the appointed special tasks, for the District to charge the costs to the operating budget rather than the identified funding source deprives TSAS of the benefits agreed upon. Further, had TSAS known that the District was going to fail to fulfill its agreement to fund COVID paras, TSAS may have chosen to use its funds differently rather than funding this position with precious operating budget dollars.

The MOA contemplates that TSAS and the Ketchikan Charter School will be treated equitably with other schools. The action of providing District funding for COVID paras for all schools other than TSAS, and charging the TSAS operating budget for the same COVID para services which are District funded by special COVID funds at the other schools, is improper, inequitable, and violates the covenant of good faith and fair dealing. The APC requests that these costs improperly charged to the TSAS operating budget be refunded by the District.

Accordingly, the APC asks that you direct that TSAS be afforded the benefits to which it is entitled, specifically, that the TSAS operating budget be refunded the \$70,745.74 which was improperly charged to the TSAS operating budget, and that the District not charge these employee costs to the TSAS operating budget in the current fiscal year.

If you have questions regarding the issues set out in this letter, please contact me at your convenience.

Very truly,

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Scott A. Brandt-Erichsen

cc: TSAS APC
(via email: loughmanb@kpunet.net; herringbaycabins@gmail.com; and, dougregg16@gmail.com)

Scott Huff, TSAS Principal
(via email: scott.huff@k21schools.org)

Enclosures: None.

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December 1, 2022

Via email to s.brandt-erichsen@keenecurrall.com

Scott Brandt-Erichsen
Keene & Currall
540 Water Street, Suite 302
Ketchikan, Alaska 99901

Re: Tongass School of Arts and Sciences
Our File No. 1113-0103

Dear Sir:

In October you sent Ketchikan Gateway Borough School District Superintendent Michael Robbins a letter on behalf of the Tongass Schools of Arts and Science's Academic Policy Committee requesting that that the District "refund" the charter school \$70,745.74. The District declines that request.

One aspect of the charter school's request related to accounting for the salary of [REDACTED] is not a special education teacher and cannot be a special education teacher at the charter school or anywhere else in Alaska because she does not have a teaching certificate with a special education endorsement. She received for last school year and again for this school year an emergency certification with no such endorsement. Contrary to the implication in your October letter, the District has not foisted [REDACTED] on the charter school. The recommendation that she be hired for the charter school came from [REDACTED], who urged that she be brought on as an employee for the charter school even after both [REDACTED] and [REDACTED] were clearly informed last November that [REDACTED] did not have and could not obtain certification with a special education endorsement. To remain compliant with state and federal obligations while honoring the charter school's choice of [REDACTED], the District contracted for two different teachers with the required special education endorsements to provide required supervision. Under the terms of the memorandum of agreement clarifying the budget funding for the District's charter schools, the cost of those individuals is a special education cost appropriately allocated to the District while the cost of [REDACTED] is not.

The other aspect of the charter's request relates to the cost of substitute paraprofessionals which you have asserted should be allocated to a District fund for "COVID" paras rather than to the charter school's operating budget. The District coded

December 1, 2022

Page 2

the allocation of wages for substitutes in accordance with the documentation contemporaneously submitted by the charter school, which did not indicate that those individuals were working in COVID positions or doing COVID-related duties. There does not appear to be legitimate grounds for an after-the-fact request to recode the charter school's staffing costs for last year or the current school year.

Sincerely,

SEDOR, WENDLANDT, EVANS & FILIPPI, LLC


Lea E. Filippi

cc: client

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GEOFFREY G. CURRALL - 1944-2016

December 8, 2022

Via Email: stephen.bradford@k21schools.org

Stephen Bradford, President
Ketchikan Gateway Borough School Board
333 Schoenbar Road
Ketchikan, Alaska 99901

Re: SPED Services and COVID Para costs at TSAS

Dear School Board President Bradford,

The Tongass School of Arts and Sciences (TSAS) Academic Policy Committee (APC) has asked me to follow up on their prior efforts to resolve a dispute regarding interpretation of the Memorandum of Agreement (MOA) between the charter schools and the Ketchikan Gateway Borough School District (District) and to correct District errors in charging expenses to the TSAS budget. In July TSAS sent the Superintendent a letter detailing these issues. Subsequently they were discussed in an August 24, 2022, meeting between District staff and APC representatives, and addressed in a follow up August 29, 2022, email from the APC president Tina Peckham to the Superintendent and board member Mattson. In October the APC asked me to follow up with the Superintendent, which I did by letter dated October 14, 2022, (copy attached). The District response was provided December 1, 2022, by letter from Lea Filippi, (copy attached). The APC has asked me to bring the issue to the Board's attention for resolution.

Specifically, the APC is requesting that: 1) the District credit the FY 2023 TSAS budget \$69,400.18 which represents improperly charged Special Education (SPED) costs and Covid aid costs as detailed below; and, 2) the District not make the same error and use care to properly allocate the SPED costs for the current fiscal year as called for in the 2021 School Board approved MOA. The specific credit to the TSAS operating budget requested consists of \$59,269.60 in SPED services costs which were charged to the TSAS operating budget rather than to the District SPED budget, and \$10,130.58 in COVID paraprofessional (para) costs which were charged to the TSAS operating budget rather than to the District fund for COVID paras.

The December 1, 2022, response to this request on the SPED costs issue repeats the assertion that the costs of the District employee designated by the District to provide SPED services at TSAS cannot be treated as SPED expenses in compliance with state and federal funding limitations and Alaska Department of Education and Early Development (DEED) rules. The District had advised in May, 2022 that it could not knowingly code the employee's expenses as a SPED cost even though she was providing the SPED services.

This employee was not yet certified as a SPED teacher, and thus could not hold a position designated as SPED Teacher, but could and did work full time providing SPED teaching services. The District position draws the unwarranted conclusion that if an employee cannot be placed in a SPED position, their personnel costs cannot be treated as SPED expenses. This position denies the reality that the employee is physically working as a SPED service provider and under the MOA between the District and the Charter Schools, SPED instruction is a Districtwide expense not to be charged to the TSAS instructional

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School Board President Bradford
December 8, 2022
Page 2

budget. The December 1, 2022, letter repeats the position that the payment of the personnel costs of this employee providing SPED instruction are not a SPED cost properly allocated to the District.

The response from the Anchorage law firm the District engaged to respond on behalf of the Superintendent is inconsistent with the information provided by the DEED. See attached copy of November 29, 2022, email from Don Enoch with the Alaska DEED to Scott Huff, TSAS principal, advising that, apparently contrary to the position represented by the December 1, 2022, letter, a regular education teacher may, as this teacher has, provide special education services to students under the supervision of a certified teacher. To pretend that the instruction provided by this employee is not SPED, which is clearly the District's responsibility, denies the reality of what is happening.

With respect to the para position funded by COVID funds, the response in the December 1, 2022, letter takes the position that TSAS failed to specifically code the substitute employee time as "COVID Paras" and as a result it cannot be corrected. Where the District's automated substitute tracking program did not allow that option, this response is disingenuous.

The APC asks that the Board review the correspondence and the situation and provide direction to staff to correct these improper charges to the TSAS operating budget. As explained in the letter to the Superintendent, relying on a technical position which was not identified to the APC, nor is supported by the facts, as a justification for shifting expenses for which the District is responsible to the TSAS operating budget violates the covenant of good faith and fair dealing. The denial of TSAS the access to the COVID para funding for the appropriate portion similarly violates fair dealing principles. The unfairness here is obvious. We ask that you correct the situation without either the TSAS or the District incurring any more expense to correct this error in administering the agreement between the parties.

If you have questions regarding the issues set out in this letter, please contact me at your convenience.

Very truly,

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Scott A. Brandt-Erichsen

cc: Superintendent Robbins
Ketchikan Gateway Borough School Board Members
TSAS APC
(via email: loughmanb@kpunet.net; herringbaycabins@gmail.com; and, douggregg16@gmail.com)
Scott Huff, TSAS Principal
(via email: scott.huff@k21schools.org)

Enclosures: October 14, 2022, Letter to Superintendent
December 1, 2022, Response Letter from L. Filippi
November 29, 2022 Email response from D. Enoch

From: Enoch, Donald E (EED) <donald.enoch@alaska.gov>

Date: Tue, Nov 29, 2022 at 2:42 PM

Subject: Re: Question related to Sped funding

To: Scott Huff <scott.huff@k21schools.org>

Hello Scott,

Thank you for your email. A regular education teacher may provide special education services to students under the supervision of a certified special education teacher.

If a supervised regular education teacher is working exclusively with special education students, there is no conflict using state or federal funds to pay the supervised regular education teacher.

I hope this helps!

Thank you,

Don

Don Enoch

Alaska DEED, IEE/SPED

M - F 6:30 am to 3:00 pm

907.957.1346

When I was a boy of 14, my father was so ignorant I could hardly stand to have the old man around. But when I got to be 21, I was astonished at how much the old man had learned in seven years.

Mark Twain

On Nov 29, 2022, at 2:34 PM, Scott Huff <scott.huff@k21schools.org> wrote:

You don't often get email from scott.huff@k21schools.org. [Learn why this is important](#)

CAUTION: This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Don,

I wanted some information about a scenario I was wondering about.

Can a regular education teacher working only with special education students and under a certified special education teacher be paid using special education funds?

Haw'aa

Scott Huff, TSAS Principal

Tongass School for the Arts and Sciences

410 Schoenbar Rd # 202, Ketchikan, AK 99901

School Phone # (907) 225-5720

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