



## LAW DEPARTMENT

DATE: April 4, 2024

TO: Beth McEwen, City Clerk  
Di Cathcart, Deputy Municipal Clerk

VIA: Robert Palmer III, City Attorney

FROM: Emily Wright, Assistant Municipal Attorney

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You asked for a legal opinion regarding the submitted application for a recall petition for Juneau School District Board President Deedie Sorensen<sup>1</sup> and Board Vice-President Emil Mackey<sup>2</sup>.

Board of Education members are subject to recall pursuant to Alaska Constitution Article XI §8 and AS §29.26.240-360. Although there are recall provisions in CBJ Charter, many of those provisions are in conflict with AS §29.240-360, as our Charter predates current statute (i.e. five v. ten people to sponsor a recall application and thirty v. sixty days to collect signatures). Pursuant to AS §29.26.360, if there is a conflict, I recommend you follow state law.

The Clerk's office is required to review signatures and word count under AS §29.26.260. If you determine there are ten lawful sponsors for each recall application, then I recommend you prepare recall petitions as one of the grounds for recall stated in each application satisfies the requirements of AS §29.26.260.

The timeframes for collection of signatures and a recall election can be found in AS §29.26.270-360. AS §29.26.270(a)(6) requires that only the ten or eleven recall sponsors can circulate a petition:

“(a) If the municipal clerk determines that an application for a recall petition meets the requirements of AS §29.26.260, the clerk shall prepare a recall petition. All copies of the petition must contain...(6) a statement, with space for the sponsor's sworn signature and date of signing, that the sponsor personally circulated the petition, that all signatures were affixed in the presence of the sponsor, and that the sponsor believes the signatures to be those of the persons whose names they purport to be;...”.

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<sup>1</sup> Ms. Sorensen was elected to the Board of Education in 2022 and 2019, each for three-year terms.

<sup>2</sup> Mr. Mackey was elected to the Board of Education in 2022 and 2019, each for three-year terms.

Below I will review the historical, statutory, and case law related to recall in Alaska and then walk you through each allegation of the Petitions.

## I. Alaska Constitution and Statutory Language

The Alaska Constitution Article XI §8 provides:

All elected public officials in the State, except judicial officers, are subject to recall by the voters of the State or political subdivision from which elected. Procedures and grounds for recall shall be prescribed by the legislature.

During the Alaska Constitutional Convention there was vigorous debate regarding this section, not focused on whether it should or should not be included, rather, focused on the parameters for recall.<sup>3</sup> Prior to statehood, recall was codified in territorial law, which required a showing of “malfeasance, misfeasance, and nonfeasance.”<sup>4</sup> Delegates to the Constitutional Convention discussed whether to provide voters with clearly defined parameters for recall within the Constitution versus no/broad parameters. The delegates settled for a middle ground which laid out that recall is available to Alaska voters but tasked the Alaska State Legislature with setting forth the basis and process for recall.

In 1959 the Legislature enacted initial statutory language which provided “informational” guidance as to the grounds for recall.<sup>5</sup> In 1972, the Legislature fully enacted statutory language found at AS §29.26.240-360. These provisions establish the grounds and process for recall and are applicable to the City and Borough of Juneau through AS §29.26.360. The grounds for recall, are “misconduct in office, incompetence, or failure to perform prescribed duties.”<sup>6</sup>

Recall provides “voters a check on the activities of their elected officials above and beyond the power to elect another candidate when the incumbent’s term expires.”<sup>7</sup> These statutes are liberally construed to permit people to vote and express their will.<sup>8</sup> The recall process kicks off with a recall petition application, which must include a short statement of the grounds for recall “stated with particularity.”<sup>9</sup> Regarding its sufficiency, it does not matter if the petition’s statement contains untrue or mischaracterized facts.<sup>10</sup> It does not matter if the petition’s statement omits facts regarding mitigating circumstances.<sup>11</sup> It does not matter if the petition’s

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<sup>3</sup> *State v. Recall Dunleavy* 491 P.3d 343, 350-352.

<sup>4</sup> *Id.* at 351.

<sup>5</sup> *Meiners v. Bering Strait School District and the Recall of Public Officers: A Proposal for Legislative Reform*, R. Fossey, Alaska Law Review vol 2:41, 48 (1985).

<sup>6</sup> AS §29.26.250. (Note: statute was renumbered in 1985).

<sup>7</sup> *Meiners c. Bering Strait Sch. Dist.*, 687 P.2d 287, 294 (Alaska 1984).

<sup>8</sup> *Jones v. Biggs*, 508 P.3d 1121, 1124 (Alaska 2022).

<sup>9</sup> AS §29.26.260(a)(3). Note “particularity” does not require “details of evidence” and can be satisfied with a brief statement giving the official fair notice of the claim and its grounds. *State, Off. of Lieutenant Gov., Div. of Elections v. Recall Dunleavy*, 491 P.3d 343, 357 (Alaska 2021).

<sup>10</sup> *Meiners v. Bering Strait Sch. Dist.*, 687 P.2d 287, 301 (Alaska 1984).

<sup>11</sup> *Id.* at 301.

statement characterizes a law alleged to have been violated differently than others would.<sup>12</sup> A petition’s factual allegations are considered true and the petition is sufficient if “such facts constitute a prima facie showing of” at least one of the statutory grounds for recall.”<sup>13</sup> As pointed out in *Jones v. Biggs*, “the threshold for legal and factual sufficiency is low [...]”<sup>14</sup> The recall petition must simply provide the relevant “acts or omissions with sufficient particularity to give the targeted official a “fair opportunity to defend his conduct in a rebuttal limited to 200 words.”<sup>15</sup>

## II. Grounds for Recall and Case Law

### a. “Misconduct in Office”

The Supreme Court has declined to specifically define “misconduct in office.”<sup>16</sup> In *Jones v. Biggs*, the Court reiterated its position that statutes must be “liberally construed so that ‘the people [are] permitted to vote and express their will.’”<sup>17</sup> They provided that alleged “misconduct in office” for recall purposes does not need to satisfy the elements of the criminal offense of official misconduct; rejecting the Municipality of Anchorage’s use of a Black’s Law Dictionary definition as overly proscriptive.<sup>18</sup> Instead, for recall purposes, “misconduct in office” is more akin to “[a]ny unlawful behavior by a public officer in relation to the duties of his office, willful in character.”<sup>19</sup> However, the Court continued to apply prior precedent in that there is no misconduct when an official legally exercises the discretion granted to them by law.<sup>20</sup>

In *Jones v. Biggs*, an assembly member’s participation in an assembly meeting in knowing violation of a public health executive order was sufficient to make an initial showing of misconduct in office.<sup>21</sup> On the other hand, in *von Stauffenberg v. Committee for an Honest & Ethical School Board*, the Court held proper (and properly performed) exercises of discretion, like the decision to go into executive session where an open meetings act exception existed, cannot support this statutory ground for recall (or “failure to perform prescribed duties”) as there would be no violation of law.<sup>22</sup>

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<sup>12</sup> *Id.* at 301.

<sup>13</sup> *Jones*, 508 P.3d, at 1124 (quoting *Recall Dunleavy*, 491 P.3d, at 356).

<sup>14</sup> *Jones*, 508 P.3d, at 1124.

<sup>15</sup> *Jones*, 508 P.3d, at 1124 (quoting *Meiners*, 687 P.2d at 302).

<sup>16</sup> *Jones*, 508 P.3d, at 1124; see also *Meiners*, 687 P.2d, at 299 n.14.

<sup>17</sup> *Jones*, 508 P.3d, at 1124 (quoting *Meiners*, 687 P.2d at 296).

<sup>18</sup> *Jones*, 508 P.3d, at 1125 (regarding AS §11.56.850).

<sup>19</sup> *Id.* at 1126 (quoting *Misconduct in Office*, BLACK’S LAW DICTIONARY (rev. 4<sup>th</sup> ed. 1968)). As the Court noted, the statutory grounds were established in 1972; 1985 was a reorganization. *Jones*, 508 P.3d, at 1123 n.2.

<sup>20</sup> *von Stauffenberg v. Comm. for an Honest & Ethical Sch. Bd.*, 903 P.2d 1055, 1060 (Alaska 1995).

<sup>21</sup> *Jones*, 508 P.3d, at 1127.

<sup>22</sup> *von Stauffenberg*, 903 P.2d, at 1060 (reaffirmed at *Recall Dunleavy*, 491 P.3d, at 356).

## b. “Incompetence”

In *Recall Dunleavy*, the Alaska Supreme Court accepted a superior court’s definition of “incompetence” as it was one of common usage.<sup>23</sup> The Court emphasized that it would not add specificity where none was added by the Legislature, and to do so would come precariously close to “wrapping the recall process in such a tight legal straightjacket that a legally sufficient recall petition could be prepared only by an attorney who is a specialist in election law matters.”<sup>24</sup> As noted by the Court in *Recall Dunleavy*, even a single mistake may be sufficient to support the statutory ground of incompetence.<sup>25</sup> Similarly, an allegation of incompetence may be supported by facts indicating an official violates a law they were not aware of.<sup>26</sup> The Court repeatedly expresses it should be left to the voters to decide the seriousness of recall allegations.<sup>27</sup>

## c. “Failure to Perform Prescribed Duties”

This statutory ground for recall is appropriate when an official is alleged to have violated an existing law.<sup>28</sup> The recall petition in *Meiners* addressed school board members’ “failure to control the administrative practices” of a superintendent who was alleged to have misappropriated money.<sup>29</sup> The duty that the school board members failed to perform stemmed from AS §14.08.111, which directed the school board to “employ a chief school administrator[.]”<sup>30</sup> The Court stated, “[i]mplicit in the board’s duty to ‘employ’ a superintendent are duties such as the following: to determine what the duties of the position of superintendent shall be, to advise the superintendent on the manner in which it wishes him to perform his duties, to evaluate his performance, and to determine from time to time whether he should be retained or whether they should ‘employ’ someone else.”<sup>31</sup> Thus, the alleged unlawful expenditures (purportedly in violation of Alaska’s constitution as not being for public purposes) by the superintendent sufficiently supported this statutory ground against school board members.<sup>32</sup> This ruling was reaffirmed by the Alaska Supreme Court in *State v. Recall Dunleavy* in July 2021.<sup>33</sup>

<sup>23</sup> *Recall Dunleavy*, 491 P.3d, at 361.

<sup>24</sup> *Id.* (Defining incompetence as “lack of ability to perform the official’s required duties.”)

<sup>25</sup> *Id.* at 371.

<sup>26</sup> *Id.* at 364.

<sup>27</sup> *Id.* at 371.

<sup>28</sup> *See Meiners*, 687 P.2d, at 301 (stating, “If the petition alleges violation of totally non-existent laws, then it would not allege failure to perform prescribed duties.”).

<sup>29</sup> *Id.* at 299-300.

<sup>30</sup> The current version of AS §14.08.111(3) provides a school board shall “approve the employment of the professional administrators....” The alteration would likely be considered immaterial.

<sup>31</sup> *Meiners*, 687 P.2d, at 300.

<sup>32</sup> *Id.* at 300. The superintendent’s expenditures were alleged to violate Article IX, section 6 of the state Constitution (“No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose.”).

<sup>33</sup> 491 P.3d, at 355. In *Recall Dunleavy*, the Court stated regarding *Meiners*, “We rejected [the argument that controlling the superintendent was a discretionary function], holding that ‘[i]mplicit in the board’s duty to “employ” a superintendent’ are the duties to evaluate the superintendent’s performance and replace him when necessary.” *Recall Dunleavy*, 491 P.3d, at 355 (quoting *Meiners*, 687 P.2d, at 300).

As the Court stated in *Meiners*, “[w]hen the board undertakes to exercise one of its powers specified . . . it must do so in accordance with the law, even though it had no obligation to exercise that particular power at all.”<sup>34</sup> For this reason, alleged violations of state public records laws, public meeting laws, and the state Constitution may similarly support this statutory ground for recall even when occurring in relation to the board exercising a discretionary action.<sup>35</sup> As mentioned in Section (a) above, in *von Stauffenberg v. Committee for an Honest & Ethical School Board*, the Court held proper (and properly performed) exercises of discretion cannot support this statutory ground for recall as there is no violation of law.<sup>36</sup>

The Petitions submitted allege seven separate allegations in its support for the recall of President Sorensen and eight allegations in support for the recall or Vice President Mackey. Each allegation cites to a Board of Education Policy.<sup>37</sup> The Board of Education is bound by federal, state, and local laws. Board policies have been promulgated specifically to guide the district pursuant to AS §14.14.100. Board Bylaw 9311: Board of Education Policies opens with the following statement:

The Board of Education recognizes that its most important function is to establish policies, which communicate its direction for the management and control of the schools. Policies are written statements adopted by the Board of Education, which communicate the guidelines, and limits within which the Superintendent or designee and staff may take discretionary action.

Board Bylaw 9312: Board of Education Bylaws states:

The implementation of policies is an administrative task to be performed by the Superintendent or designee who shall be held responsible for the effective administration and supervision of the entire school district.

By their very nature board policies are guidelines for the effective administration of the school district and school board and may not automatically have the binding effect of law for recall purposes like statute or a provision of the Alaska Constitution. When applicable, the bylaw or policy documents reference state law. In the analysis below, footnotes have been added to denote whether a state law is present. Absent state law, the reliance on policies may fail to meet legal sufficiency for a recall.<sup>38</sup>

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<sup>34</sup> *Meiners*, 687 P.2d, at 300.

<sup>35</sup> *Id.* at 300-301 (reaffirmed at *Recall Dunleavy*, 491 P.3d, at 355-56).

<sup>36</sup> *von Stauffenberg*, 903 P.2d, at 1060 (reaffirmed at *Recall Dunleavy*, 491 P.3d, at 356).

<sup>37</sup> Throughout this document you will see reference to “BB,” which refers to Board Bylaws, and “BP,” which refers to Board Policy.

<sup>38</sup> *Meiners*, 687 P.2d, at 301 (“If the petition alleges violation of totally non-existent laws, then would not allege a failure to perform prescribed duties.”). *See also*, *State v. Recall Dunleavy*, 491 P.3d, at 363-364 (discussing the fact that while some voters will ultimately base their vote to recall or not to recall on policy or politics, the job of the court is to review for legal sufficiency the allegations that the Governor violated Alaska law).

### III. Sorensen Petition

Below is an analysis of each allegation's legal sufficiency.

1. Failure to communicate with stakeholders, creating an avoidable crisis, and rushing to adopt a polarizing consolidation model while refusing to factor in significant negative community impacts, violating Juneau Borough School District BP1100, BP0530(2)(2.3)(5.3)(6).

*a) Board Policies: Appendix A*

*b) Recall Provisions:* Accepting the Petition's statements as true, Petition #1 is legally insufficient as to misconduct in office, incompetence, or failure to perform prescribed duties. The Board policies cited by the Petition are fully discretionary in nature. There is no legal duty established under BP1100. There are no allegations that Ms. Sorensen violated meeting procedures. While BP530 states that school closures require notice and a publicly approved and reviewed plan, the Petition does not allege that Ms. Sorensen failed to comply with these requirements. Rather the Petition argues with her discretionary decisions regarding communication and timing, as well as her internal thought process. The Petition does not allege that Ms. Sorensen's discretionary decisions regarding the school closure violated policy or law. Further, the Petition does not provide facts with particularity that would allow voters to evaluate or Ms. Sorensen to fairly respond to the allegations.

2. Failure to heed 2017 study warning of declining enrollment and need to consolidate, violating BP3000(1)(2), BP1100.<sup>39</sup>

*a) Board Policies: Appendix A*

*b) Recall Provisions:* Accepting the Petition's statements as true, Petition #2 is legally insufficient as to misconduct in office, incompetence, or failure to perform prescribed duties. As an initial matter, it is unclear what provision of BP3000 the Petition is referring to, as there are multiple paragraphs with subsections. For the sake of this review, all will be incorporated.

BP3000 sets forth the guiding principles for Board members when establishing a budget. BP1000, similarly sets for goals for communicating with the public as part of that process. The Petition fails to provide enough particularity in this allegation such that the voters can evaluate, and Ms. Sorensen can fairly respond. Ms. Sorensen was elected to the School Board in 2019. Accepting that Ms. Sorensen knew about, or should have known about the 2017 study, the Petition does not point to any law that was violated or duty that was failed. Further, the statement itself points to the discretionary nature of decision-making. Accepting that she did not "heed" a warning, there is no

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<sup>39</sup> AS §14.14.090, AS §14.14.060, and AS §14.03.120.

legal basis requiring her to do so. If we look at this under a lens of incompetence, or a “lack of ability to perform the official’s required duties,” the Petition lacks particularity as to how the consideration (or not) of a study represents an inability to meet the roles and responsibilities of the position.

3. Failure to instruct Superintendent to be transparent about looming debt crisis when notifying public by 10/1/23 per BP3460, BP3100.<sup>40</sup>
  - a. Officially notified public of budget deficit crisis 1/12/24.
  - b. Consolidation model hastily approved on 2/22/24.

*a) Board Policies: Appendix A*

*b) Recall Provisions:* Accepting the Petition’s statements as true, Petition #3 is legally insufficient as to misconduct in office, incompetence, or failure to perform prescribed duties. The Board is responsible for the oversight and supervision of the Superintendent, which, by policy, includes review of the budget and, by law, the adoption of a final budget. However, the language presented in this allegation is focused on the Board’s “failure to instruct the Superintendent to be transparent.” BP3460, BP3100, and the corresponding state law does not set forth any legal requirement regarding this allegation. No law exists requiring a specific deadline to notify the public. The Petition has not provided facts with particularity nor is there a legal requirement which would allow voters to evaluate and Ms. Sorensen to fairly respond to the allegations.

4. Refusal to incorporate community input and testimony 3/12/24, violating BP1120.<sup>41</sup>

*a) Board Policies: Appendix A*

*b) Recall Provisions:* Accepting the Petition’s statements as true, Petition #4 is legally insufficient as to misconduct in office, incompetence, or failure to perform prescribed duties. The Petition does not state with particularity facts that would allow Ms. Sorensen to fairly respond. Ms. Sorensen’s level of consideration and incorporation of community input is a fully discretionary function; there is no legal requirement that an individual elected person incorporate community input and testimony from a meeting. Going back to the historical debates at the Constitutional Convention, Delegate James Hurley worried that by keeping the recall language too broad it would lend itself to an allegation by a “recalcitrant officer who was not elected.”<sup>42</sup> This appears to be the situation here. A board members’ thought process resulting in a vote not going one’s way is not sufficient for a recall. The allegation does not meet the statutory requirements.

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<sup>40</sup> AS §14.08.111, AS §14.14.090, AS §14.14.060, and AS §14.17.300-990.

<sup>41</sup> No state law or city code.

<sup>42</sup> *Meiners*, 687 P.2d, at 295.

5. Permitting Mackey to intimidate/demean a fellow board member at the 3/7/24 board meeting, then attacking and degrading community members. Demonstrated inability to maintain order and censure Mackey for his inappropriate behavior, violating BP0200, BP9010<sup>43</sup>, BP1000, BP1120.<sup>44</sup>

*a) Board Policies: Appendix A*

*b) Recall Provisions:* Accepting the Petition’s statements as true, Petition #5 is legally insufficient as to misconduct in office, incompetence, or failure to perform prescribed duties. The Board Policies presented in the Petition have no requirements regarding Board behavior at meetings, nor do they prescribe a response by the Board President. The Petition has failed to identify the legal duties that Ms. Sorenson has violated. The Court’s decision in *von Stauffenberg* is clear that the grounds listed by a petition must be “stated with particularity.”<sup>45</sup> This is to ensure that the person subject to recall can understand and fairly respond to the allegations. In this instance, it is unclear what exact behavior Ms. Sorensen was supposed to respond to, what her individual legal obligation to respond consisted of, and whether there are any time requirements for response. Further, it should be noted that, even accepting that Ms. Sorensen had a duty to monitor the conduct of other members, she has discretion to choose how, when, and whether to address the conduct.

6. Publishing an Opinion News article 3/9/24 undercutting a board member’s ‘approved’ motion to present new information to the community, violating BP1000.<sup>46</sup>

*a) Board Policies: Appendix A*

*b) Recall Provisions:* Accepting the Petition’s statements as true, Petition #6 is legally insufficient as to misconduct in office, incompetence, or failure to perform prescribed duties. Board members are explicitly permitted to engage with the public under BP1000, which states “[t]he administration is responsible for all public communication except for such matters as the Board of Education may wish to deal with publicly itself.” Further, BB9010 (included in Appendix A) provides specifics for how a Board member, or the Board, may comment publicly. Moreover, Board members do not lose their First Amendment rights simply because they are elected to the Board.

7. Failure to understand the FY24 budget and accounting errors resulting in \$7.9M deficit and taxpayer loan from CBJ, violating BP3460.<sup>47</sup>

*a) Board Policies: Appendix A*

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<sup>43</sup> BP9010 does not exist, this analysis incorporates BB9010, as it is likely a simple typo.

<sup>44</sup> AS §14.03.120, AS §14.07.165, no state law or city law for BB9010, AS §14.03.120, and no state law or city code for BP1120.

<sup>45</sup> *von Stauffenberg*, 903 P.2d, at 1060.

<sup>46</sup> AS §14.03.120.

<sup>47</sup> AS §14.08.111 and AS §14.14.090.



- b) *Recall Provisions:*** Accepting the Petition’s statements as true, Petition #7 is legally sufficient as to incompetence or failure to perform prescribed duties. Under AS §14.17.900 the Board is required to “establish, maintain, and operate under a balanced budget.” Board policies set forth timeframes as well as the public process. This allegation sufficiently sets forth facts, which accepted as true for these purposes, demonstrate a failure to perform prescribed duties. The Petition has provided facts with particularity which would allow voters to evaluate and Ms. Sorensen to fairly respond to the allegations.

#### IV. Mackey Petition

The Petition alleges eight separate allegations in its support for the recall of Mr. Mackey. Below is an analysis of each allegation’s legal sufficiency.

1. Not communicating with stakeholders and refusing to factor in significant negative community impacts in rush adopting a polarizing consolidation model, violating Juneau Borough School District BP1100, BP0530(2)(2.3)(5.3)(6).<sup>48</sup>

**a) *Board Policies: Appendix A***

- b) *Recall Provisions:*** Accepting the Petition’s statements as true, Petition #1 is legally insufficient as to misconduct in office, incompetence, or failure to perform prescribed duties. The Board policies cited by the Petition are fully discretionary in nature. There is no legal duty to act established under BP1100. There are no allegations that Mr. Mackey violated the law or board procedure regarding public testimony. While BP530 requires notice and a publicly approved and reviewed plan in the case of school closure, the Petition does not allege that Mr. Mackey failed to comply with these legal requirements. Rather it argues with his discretionary decisions made regarding communication and timing, as well as his internal thought process. The Petition does not allege that Mr. Mackey’s discretionary decisions regarding the school closure violate policy or law. Further, the Petition has not provided facts with particularity which would allow voters to evaluate or Mr. Mackey to fairly respond to the allegations.

2. Failure to heed 2017 study warning of declining enrollment and need to consolidate, violating BP3000(1)(2), BP1100.<sup>49</sup>

**a) *Board Policies: Appendix A***

- b) *Recall Provisions:*** Accepting the Petition’s statements as true, Petition #2 is legally insufficient as to misconduct in office, incompetence, or failure to

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<sup>48</sup> AS §14.03.120 and 4 AAC 05.090.

<sup>49</sup> AS §14.14.090, AS §14.14.060, and AS §14.03.120.

perform prescribed duties. As an initial matter, it is unclear what provision of BP3000 the Petition is referring to, as there are multiple paragraphs with subsections. For the sake of this review, all will be incorporated.

BP3000 sets forth the guiding principles for Board members when establishing a budget. BP1000, similarly sets for goals for communicating with the public as part of that process. The Petition fails to provide enough particularity in this allegation such that the voters can evaluate and Mr. Mackey can fairly respond. Mr. Mackey was elected to the School Board in 2019. Accepting that Mr. Mackey knew about, or should have known about the 2017 study, the Petition does not point to any law that was violated or duty that was failed. The allegation itself points to the discretionary nature of decision-making. Accepting that he did not “heed” a warning, there is no legal basis requiring him to do so. If we look at this under a lens of incompetence, or a “lack of ability to perform the official’s required duties,” the Petition lacks particularity as to how the consideration (or not) of a study represents an inability to meet the roles and responsibilities of the position.

3. Failure to instruct Superintendent to be transparent about looming debt crisis when notifying public by 10/1/23 per BP3460, BP3100.<sup>50</sup>
  - a. Officially notified public of budget deficit crisis 1/12/24.
  - b. Consolidation model hastily approved on 2/22/24.

*a) Board Policies: Appendix A*

*b) Recall Provisions:* Accepting the Petition’s statements as true, Petition #3 is legally insufficient as to misconduct in office, incompetence, or failure to perform prescribed duties. The Board is responsible for the oversight and supervision of the Superintendent, which by policy includes review of the budget and by law requires the adoption of a final budget. However, the language presented in this allegation is focused on the Board’s “failure to instruct the Superintendent to be transparent.” BP3460, BP3100, and the corresponding state law does not set forth any legal requirement regarding this allegation. No law exists requiring a specific deadline to notify the public. The Petition has not provided facts with particularity or a legal framework which would allow voters to evaluate and Mr. Mackey to fairly respond to the allegations.

4. Refusal to incorporate community input and testimony 3/12/24, violating BP1120.<sup>51</sup>

*a) Board Policies: Appendix A*

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<sup>50</sup> AS §14.08.111, AS §14.14.090, AS §14.14.060, and AS §14.17.300-990

<sup>51</sup> No state law or city code.

**b) Recall Provisions:** Accepting the Petition’s statements as true, Petition #4 is legally insufficient as to misconduct in office, incompetence, or failure to perform prescribed duties. The Petition does not state with particularity facts that would allow Mr. Mackey to fairly respond. Mr. Mackey’s level of consideration and incorporation of community input is a fully discretionary function; there is no legal requirement that an individual elected person incorporate community input and testimony from a meeting. Going back to the historical debates at the Constitutional Convention, Delegate James Hurley worried that by keeping the recall language too broad it would lend itself to an allegation by a “recalcitrant officer who was not elected.”<sup>52</sup> This appears to be the situation here; the Petition attempts to recall Mr. Mackey for his thought process and his final decision, not because he violated any law. The allegation does not meet the statutory requirements necessary.

5. Publicly intimidating a board member at the 3/7/24 board meeting for motioning to present alternative consolidation model information, which achieved a majority vote, violating BP0200, BP9010.<sup>53</sup>
  - a. Verbally attacking and degrading community members; visually displayed his inability to maintain composure, violating BP1000, BP1120.

**a) Board Policies:** *Appendix A*

**b) Recall Provisions:** Accepting the Petition’s statements as true, Petition #5 is legally insufficient as to misconduct in office, incompetence, or failure to perform prescribed duties. The board policies presented in the Petition have no requirements regarding board member behavior at meetings. Board policies BB9020 and BB9271 (included in Appendix A) set forth general guidelines and aspirational language regarding the ethics which should guide board members. There is no legal obligation for a Board member to adhere to the standards set forth in policy. Similar to other elected bodies, a board member may find themselves subject to censure by their fellow members should they not adhere to standards, but the Petition has cited no legal obligation to act in a particular manner.<sup>54</sup> Further, as discussed with Ms. Sorensen above, the Petition fails to state with any particularity what actions Mr. Mackey took, such that he can fairly respond.

6. Publishing Open Letter article 3/8/24 undercutting a board member’s ‘approved’ motion to present new information to the community, violating BP1000.<sup>55</sup>

**a) Board Policies:** *Appendix A*

**b) Recall Provisions:** Accepting the Petition’s statements as true, Petition #6 is legally insufficient as to misconduct in office, incompetence, or failure to

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<sup>52</sup> *Meiners*, 687 P.2d, at 295.

<sup>53</sup> AS §14.03.120, AS §14.07.165, no state law or city law for BB9010, AS §14.03.120, and no state law or city code for BP1120.

<sup>54</sup> *von Stauffenberg*, 903 P.2d, at 1060.

<sup>55</sup> AS §14.03.120.

perform prescribed duties. Board members are explicitly permitted to engage with the public under BP1000, which states “The administration is responsible for all public communication except for such matters as the Board of Education may wish to deal with publicly itself.” Further, BB9010 (included in Appendix A) provides specifics for how a Board member, or the Board, may comment publicly. Board members do not lose their First Amendment rights simply because they are elected to the Board.

7. Failure to understand the FY24 budget and accounting errors resulting in \$7.9M deficit and taxpayer loan from CBJ, violating BP3460.<sup>56</sup>

*a) Board Policies: Appendix A*

*b) Recall Provisions:* Accepting the Petition’s statements as true, Petition #7 is legally sufficient as to incompetence or failure to perform prescribed duties. Under AS §14.17.900 the Board is required to “establish, maintain, and operate under a balanced budget.” Board policies set forth timeframes as well as the public process. This allegation sufficiently sets forth facts, which accepted as true for these purposes, demonstrate a failure to perform prescribed duties. The Petition has provided facts with particularity which would allow voters to evaluate and Mr. Mackey to respond to the allegations.

8. Failing to disclose a conflict of interest when discussing JCCS contract and relocation in addition to advertising personal business during board meetings, violating BP9270.<sup>57</sup>

*a) Board Policies: Appendix A*

*b) Recall Provisions:* Accepting the Petition’s statements as true, Petition #8 is legally insufficient as to misconduct in office, incompetence, or failure to perform prescribed duties. Board members are subject to Board Policy BP9270 (included in Appendix A), as well as City and Borough of Juneau Conflict of Interest Code CBJC 01.45. Importantly relevant to Petition #8 is the following language from City Code:

01.45.008 (a) The assembly affirms that each municipal officer holds office as a public trust, and any effort to benefit a substantial personal interest or a substantial financial interest through official action is a violation of that trust. The public trust and this chapter do not prohibit an officer from following independent pursuits, so long as those pursuits do not interfere with the full and faithful discharge of an officer's public duties. The assembly further recognizes that:

- (1) In a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be entirely without

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<sup>56</sup> AS §14.08.111 and 14.14.090.

<sup>57</sup> AS §14.08.131 and AS §29.20.010.

personal and financial interests in the decisions and policies of government;

- (2) Citizens who serve as municipal officers retain their rights to interests of a personal or financial nature; and
- (3) Standards of ethical conduct for municipal officers need to distinguish between those inconsequential conflicts which are unavoidable in a free society, and those which are substantial and material.

Accepting the Petition's statements as true, the Petition fails to define how and when the alleged conflict regarding JCCS arose, when it needed to be declared, and how Mr. Mackey's connection to JCCS triggers the legal requirements under code so that Mr. Mackey can fairly and adequately respond. Having a child in school or long-standing connection to a school are widespread attributes and not particular to one Board member. While there may be specific instances where conflicts arise, without more particularity and specificity, Petition #8 as to JCCS cannot move forward.

Accepting the Petition as true regarding Mr. Mackey's business, like his connection to JCCS, the Petition has failed to provide any particularity as to when and how Mr. Mackey violated the conflict-of-interest policy and code. The case law is clear that if Mr. Mackey does not have enough particularity to respond, the allegation should not move forward. Petition #8 as to Mr. Mackey's business cannot move forward under misconduct in office, incompetence, or failure to perform prescribed duties.

## **V. Conclusion**

The Petition for Recall may move forward as to Ms. Sorensen; Petition Allegation #7 is legally sufficient as to incompetence or failure to perform prescribed duties.

The Petition for Recall may move forward as to Mr. Mackey; Petition Allegation #7 is legally sufficient as to incompetence or failure to perform prescribed duties.

## Appendix A

**BB 9010:** Before voting on any issue, all Board of Education members shall be encouraged to present whatever evidence they may feel important to the matter at hand. The Board of Education shall fully consider the implications and relevancy of all information so presented. All opinions, reactions and positions shall be openly discussed, so that each member may understand all aspects of the issue before the Board of Education makes its decision. Any Board of Education member who may wish to criticize or oppose any specific Board of Education action should do so during the Board of Education meeting.

Once a Board of Education decision has been reached, all Board of Education members shall abide by that decision until it is amended or rescinded by subsequent Board of Education action. When Board of Education members express their opinions outside of the Board of Education meeting, it is their responsibility to respect the democratic nature of Board of Education decision-making and always identify personal viewpoints as such.

Public statements in the name of the Board of Education shall be issued by the Board of Education president or, if appropriate, by the Superintendent or designee at the direction of the Board of Education president.

**BB9020:** The Board of Education believes that it should hold itself to high standards of performance, accountability and conduct in order to meet the public trust that has bestowed by the public election of each member.

Therefore, the Board of Education has adopted the Board Standards established by the Association of Alaska School Boards, which provide a framework for effective school governance and keep the Board of Education's focus on student achievement.

Regular efforts will be made to orient new Board members to the board standards, provide on-going board development opportunities to assist all Board members in meeting those standards, and assess board performance to measure the Board of Education's effectiveness in meeting them.

1. **VISION** - The Board creates a shared vision to enhance student achievement.
  - 1.1 Board develops a dynamic shared vision for education that reflects student needs and community priorities.
  - 1.2 Board keeps the district and community focused on educating students.
  - 1.3 Board demonstrates its strong commitment to the shared vision by using it to guide decision-making.
2. **STRUCTURE** - The Board provides a structure that supports the vision.

2.1 Board establishes a management system that results in effective decision making processes and enables all people to help the district achieve its vision and make the best use of its resources.

2.2 Board ensures that long and short-term plans are developed and annually revised through a process involving extensive participation, information gathering, research, and reflection.

2.3 Board sets high instructional standards based on the best available information about the knowledge and skills students will need in the future.

2.4 Board acts to ensure vision and structure comply with legal requirements.

2.5 Board encourages and supports innovative approaches to teaching, learning and the continuous renewal of education.

**3. ACCOUNTABILITY** - The Board measures district performance toward accomplishing the vision and reports the results to the public.

3.1 Board receives regular reports on student progress and needs based on a variety of assessments to evaluate the quality and equity of the educational program.

3.2 Board evaluates Superintendent and Board performance annually and reports the results to the public.

3.3 Board ensures long and short-term plans are evaluated and revised with the needs of the students in mind.

3.4 Board uses an understandable format to periodically report district performance.

**4. ADVOCACY** - The Board champions the vision.

4.1 Board leads in celebrating achievements of students and accomplishments of others who contribute to education.

4.2 Board advocates for children and families and establishes relationships with parents and other mentors to help support students.

4.3 Board establishes partnerships with individuals, groups and organizations to promote and expand the educational opportunities for all students.

4.4 Board promotes Board of Education service as a meaningful way to make long term contributions to the local community and society.

4.5 Board is proactive in identifying and addressing issues that affect the education of all students.

**5. CONDUCT-ETHICS** - The Board and its individual members conduct the business of the district in a fair, respectful manner.

5.1 Board and its individual members perform in a manner that reflects service to the community on behalf of students.

5.2 Board demonstrates commitment to continually improving teamwork, problem solving, and decision-making skills.

5.3 Expenditures for board activities are clearly identified in the budget, related to the vision of the district, and open to public scrutiny.

**BB9121:** The Board of Education president shall preside at all Board of Education meetings. They shall:

1. Call the meeting to order at the appointed time;
2. Announce the business to come before the Board of Education in its proper order;
3. Enforce the Board of Education's policies relating to the order of business and the conduct of meetings;
4. Recognize persons who desire to speak, and protect the speaker who has the floor from disturbance or interference;
5. Explain what the effect of a motion would be if it is not clear to every member;
6. Restrict discussion to the question when a motion is before the Board of Education;
7. Rule on parliamentary procedure;
8. Put motions to a vote, and state clearly the results of the vote.
9. Submit to the Board of Education the correspondence addressed to it.

The president shall have all the rights of any member of the Board of Education, including the right to move, second, discuss, and vote on all questions before the Board of Education. The president shall also perform other duties as directed by the Board of Education, and state laws, regulations and the Board of Education, including the duty to:

1. Sign all instruments, acts, and orders necessary to carry out state requirements and the will of the Board of Education;
2. Consult with the Superintendent or designee on the preparation of the Board of Education's agendas;
3. Appoint and disband all committees, subject to Board of Education approval;
4. Call such meetings of the Board of Education as they may deem necessary, giving notice as prescribed by law;
5. Excuse board member absences from regular board meetings.
6. Confer with the Superintendent or designee on crucial matters, which may occur between Board of Education meetings;
7. Be responsible for the orderly conduct of all Board of Education meetings.
8. Share informational mail with other Board of Education members.



When the president resigns or is absent or disabled, the vice president or clerk shall perform the president's duties. When both the president and vice president and clerk are absent or disabled, the Board of Education shall choose a president pro tempore to perform the president's duties.

**BB9270:** In order to instill public confidence in public office and provide public accountability, Board of Education members shall disclose and avoid conflicts of interest involving any matter pending before the Board of Education. A conflict of interest exists when a member has a personal or financial interest on a matter coming before the Board that could render the member unable to devote complete loyalty and singleness of purpose to the public interest. Board of Education members owe the public a duty to act in the best interests of the district.

### **Decision making**

The Board recognizes that when no conflict of interest requires abstention, its members must vote on issues before the Board. If a board member or his or her family member may benefit personally or financially from a Board decision, that board member must provide full disclosure of the conflict or potential conflict of interest to the Board. The Board, without that member's participation, will then approve or disapprove of the member's deliberations and voting on the issue. If the Board determines a conflict of interest prohibits participation, the member shall abstain from deliberations and voting.

### **Appearance of impropriety**

When a situation may create the appearance of impropriety, even where state and federal laws do not require any action, the board member shall fully disclose the circumstances. The Board, without that member's participation, will then approve or disapprove of the member's deliberations and voting.

Board members who have an actual or potential conflict of interest requiring disclosure shall not seek to influence the decisions of staff or other board members on the underlying matter, or on the member's participation in the matter.

### **Other duties**

Board of Education members are expected to avoid conflicts of interest in their other duties. This includes:

1. **Confidential information.** Board of Education members shall not disclose or use confidential information acquired during the performance of official duties as a means to further their own personal or financial interests or the interests of a family member.
2. **Gifts.** Board of Education members shall not accept a gift or economic benefit that would tend to improperly influence a reasonable person or where board members know or should know the gift is offered for the purpose of influencing or rewarding official action.
3. **Business dealings with staff.** Board of Education members shall not engage in financial transactions for private business purposes with district staff whom board members directly or indirectly supervise.

4. **Compensation for services.** Board of Education members shall not receive any compensation for services rendered to the district from any source, except compensation for serving on the Board of Education and reimbursement of expenses incurred as a board member, as allowed by policy and law.

### Other legal obligations

Board of Education members shall comply with state and federal laws pertaining to conflicts of interest. Nothing in this policy restricts or affects board members' duties to comply with those laws.

**BB9271:** This code of ethics expresses the personal ideals, which the Board of Education believes should guide each Board of Education member's activities.

In all actions as a Board of Education member, the member's first commitment is to the well-being of our youth. Their primary responsibility is to every student in the district.

Board of Education members also have other major commitments to:

- ***The Community.*** Each Board of Education member is responsible to all residents of the district and not solely to those who elected them; nor solely to any organization to which he/she may belong, or which may have supported their election.
- ***Individuals.*** Each Board of Education member has a direct concern for every individual in the community. As an integral part of their duties, they represent the authority and responsibility of government. This authority must be exercised with as much care and concern for the least influential as for the most influential member of the community.
- ***Employees.*** The Board of Education member's actions may affect the capability of district employees to practice their trade or profession and should encourage their increasing competence and professional growth.
- ***Laws, Policies.*** Each Board of Education member must be aware of, and comply with, the constitutions of State and Nation, the Alaska Education Statutes, other laws pertaining to public education, and the established policies of the district.
- ***Decision making.*** Each Board of Education member is obliged by law to participate in decisions pertaining to education in the district. As an elected representative of the people, the Board of Education member can neither relinquish nor delegate this responsibility to any other individual or group.
- ***Individual Feelings and Philosophy.*** Every individual Board of Education member has something to contribute to society. Understanding and acting upon the foregoing premises, each Board of Education member shall:
  - Consider their position on the Board of Education as a public trust and not use it for private advantage or personal gain.
  - Be constantly aware that they have no legal authority except when acting as a member of the Board of Education. Board of Education members shall present their concerns and concepts through the process of Board of Education debate. If in the minority of any decision, they shall abide by and support the majority decision. When in the majority, they shall respect divergent opinions.

- Encourage ideas and opinions from the residents of the district and endeavor to incorporate community views into the deliberations and decisions of the Board of Education.
- Devote sufficient time, thought, and study to proposed actions so as to be able to base decisions upon all available facts and vote in accordance with honest convictions, unswayed by partisan bias of any kind.
- Remember that the basic functions of the Board of Education are to establish the policies by which district schools are administered and to select the Superintendent or designee and staff who will implement those policies.
- Promote and participate actively in a concerted program of timely exchange of information with all district residents, parents, employees and students.
- Recognize that the deliberations of the Board of Education in executive session may be released or discussed in public only with Board of Education approval.
- Make use of opportunities to enlarge their potential as a Board of Education member through participation in educational conferences, workshops and training sessions made available by local, state and national agencies.

**BB9311:** The Board of Education recognizes that its most important function is to establish policies, which communicate its direction for the management and control of the schools. Policies are written statements adopted by the Board of Education, which communicate the guidelines, and limits within which the Superintendent or designee and staff may take discretionary action.

The Board of Education encourages members of the community to contribute information and opinions for the Board of Education's consideration and propose revisions to policy.

The adoption of policy shall conform with Board of Education bylaws governing agenda, meetings, and voting. Only those written statements adopted and recorded in the minutes shall constitute official Board of Education policy. Prior to adoption, policies shall normally be given two readings by the Board of Education. At its second reading, the policy may be adopted by a majority vote of all members of the Board of Education. The Board of Education may waive the second reading or may require additional readings.

In addition to presenting drafts or suggestions for new policy and policy revisions when changes in law occur or when a specific need arises, the Superintendent or designee, shall maintain procedures for the continuous orderly review of existing policies through the Board of Education Policy Committee established each year. The Policy Committee is charged with conducting the regularly scheduled annual review of policies and bylaws as outlined below, evaluating and considering any policy related questions that come up to the Board of Education or administration, and reviewing recommended annual policy or bylaw updates from Association of Alaska School Boards.

The Policy Committee shall bring recommended changes forward to the full Board of Education at a time allocated for this purpose on the agenda of regular Board of Education meetings. When

policies are amended, the Superintendent or designee shall review corresponding administrative regulations to ensure that they conform to the intent of the revised policy.

When drafting or revising Board of Education policies which affect other governmental agencies or areas of common interest, the Superintendent or designee shall seek input from these agencies and shall express the Board of Education's desire to cooperate with them in addressing matters of mutual concern.

### **Regular Policy Review**

To ensure that policies are updated to meet changing conditions and legal requirements, all policies will be subject to regular review and revision.

Sections of the policy manual shall be reviewed on the following continuous rotating schedule:

Year 1 - Chapters 0 through 3

Year 2 - Chapters 4 through 5

Year 3 - Chapters 6 through 7

Year 4 - Chapters 8 through 9

**BB9312:** The Board of Education recognizes that its most important function is to establish policies, which communicate its direction for the management and control of the schools. Policies are written statements adopted by the Board of Education, which communicate the guidelines, and limits within which the Superintendent or designee and staff may take discretionary action.

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**BP200:** The Board of Education is committed to excellence and self-evaluation and believes that the public schools exist to meet the needs of students, parents/guardians and other community members. It is, therefore, important that citizens may express their expectations of the schools. The Board of Education encourages students, parents, teachers, and other community members to participate in educational planning for the district.

The Board of Education shall adopt written goals for the school district which reflect local needs. These goals shall be consistent with Board of Education policy and statewide goals adopted by the State Board of Education. The Superintendent or designee shall develop objectives for meeting these goals. The development and adoption of the budget shall be consistent with district goals and objectives.

The Superintendent or designee shall annually file with the Department of Education and Early Development and make available to the public a report which includes the adopted district goals and priorities, plans for achieving these goals and priorities, and the means of measuring the district's success in reaching its goals and priorities.

**BP530:** The Board of Education strives to maintain schools in local communities but recognizes that low student enrollment or other factors may necessitate temporary or permanent closure of a school. Board of Education action to close a school will only occur after written notice to the affected families which will be provided at least 120 days prior to school closure, absent emergency circumstances that do not permit such notice.

Absent emergency circumstances, no school closure will occur until development and approval of a closure plan. The plan must provide for the continued educational services to all eligible students, including students with disabilities. The plan must address pupil transportation services, if applicable. Additionally, the plan should contain a schedule for providing compensatory services that may be required under state and federal laws for the education of students with disabilities. Finally, the plan will provide for reimbursement to the State of money already paid for the period of closure, unless the school year is extended. If the closure is temporary, the plan will identify steps for reopening the school.

The plan will be reviewed and approved by the Board of Education at a public meeting. Following Board of Education approval, the plan will be submitted to the Department of Education and Early Development for approval. The plan will not be executed until Department of Education and Early Development approval.

**BP 1000:** The Board of Education recognizes that local, regional and international organizations, Alaska Native Tribes and all levels of government share its concerns and responsibility of the welfare, health and safety of our youth.

The Board recognizes that state and local community determine the number of educational programs available and the quality of the educational process in general. Therefore, it is imperative that members of the community work with the Board of Education and staff in developing sound educational policies, implementing programs and establishing an effective evaluation process for those programs.

School/community relations cannot merely be described as a process of reporting and interpreting, but rather can be characterized as a partnership in pursuit of excellence. It is a partnership in which community members, educators, and other school personnel perform their respective roles in view of the best interests of the schools and, most importantly, the students.

The administration is responsible for all public communication except for such matters as the Board of Education may wish to deal with publicly itself.

**BP 1100:** The Board of Education appreciates the importance of community involvement and therefore shall strive to keep the Board, staff, and all members of the community informed of developments within the school district in timely and understandable ways.

The Superintendent or designee shall use various means of communication to keep the public aware of the goals, programs, achievements and needs of our schools. Members of the community shall have opportunities to become involved in the schools and to express their interests and concerns.

**BP 1120:** The Board of Education encourages community involvement in the schools as an essential element of effective schools. The Board of Education and administration shall provide an opportunity for the input of parents and interested community members on Board of Education agenda items. Public comment is taken during regular and special meetings. Public comment is not taken during Board of Education work sessions or retreats.

**BP 3000:** The Board of Education recognizes its responsibility to the taxpayers of the district to expend public monies wisely and prudently for the maintenance of public education programs and to institute appropriate controls and accounting procedures. The Board of Education recognizes that fiscal resources and fiscal management comprise the foundational support of the entire school district. To make that support as effective as possible, the Board of Education intends to:

1. encourage advance planning through the best possible budget procedures;
2. explore practical sources of revenue;
3. guide the expenditure of funds so as to derive the greatest possible educational returns;
4. expect sound fiscal management from the administration;
5. advocate for a level of per student funding sufficient to provide quality education.

The Board of Education desires to support the educational program with high standards of safety in the operation and maintenance of school facilities, equipment and services.

#### Role of The Board of Education

The Board of Education:

1. solicits public input on educational needs and utilizes that information in making budget decisions;
2. approves and adopts the annual budget and approves budget transfers;
3. is accountable for all district funds;
4. adopts written policies governing the purchase of supplies and equipment;
5. receives and reviews the annual audit of district accounts and business procedures;
6. facilitates, with the City and Borough of Juneau, an insurance program which complies with law and reflects prudent financial management;
7. provides for long-range plans to acquire or dispose of sites and to add, maintain and staff new facilities;
8. advocates and secures community support for additional financing when necessary.

#### Role of Superintendent or Designee

The Superintendent or designee:

1. prepares the detailed annual budget and presents it to the Board of Education for adoption;
2. administers the budget and keeps expenditures within approved limits;
3. enforces requisition and purchase order policies and regulations;
4. establishes control/inventory systems to account for district funds, supplies and equipment in accordance with law and Board of Education policy;
5. makes all financial reports required by law or Board of Education policy and prepares reports for public release;
6. analyzes the district's financial condition and presents the Board of Education with proposals for meeting financial needs including budget revisions;
7. provides for the annual audit of district accounts and business procedures;

8. works with the City and Borough of Juneau and the Board of Education to establish an adequate risk management program;
9. maintains the district's non instructional and business operations.

#### Working Relationships of the Board of Education and Superintendent or Designee

The Superintendent or designee shall recommend financial plans to the Board of Education in accordance with the district's mission, vision, strategic goals and objective. The Superintendent shall recommend financial plans and options whenever district programs may be endangered by a lack of funds or when the continuation of district programs may result in an over expenditure of district funds.

The Board of Education desires complete information from the Superintendent or designee on all matters relating to the district's financial operations. The Board of Education shall closely monitor all district financial operations so that it may fully discharge its legal responsibilities with regard to school finance. The School Board will work with the Superintendent to determine the timing and format of certain financial reports, so information is timely for decision making.

The district shall seek to communicate in ways that accommodate the needs of all members of the public, including those with disabilities and those who are non-English speakers.

**BP 3100:** The Board of Education shall establish and maintain a balanced budget. The School Board shall adopt an annual budget which is compatible with the district's mission, vision, strategic goals and objectives. In the fiscal planning process the Superintendent will include projected expenses of the educational program, prepare a long-range plan for the maintenance and replacement of facilities and equipment, and develop a plan of anticipated local, state and federal revenues and expenses.

The district's annual budget shall be prepared using the best possible estimates of revenues and expenditures. The administration initiates a public budget process each year with the Board's concurrence and holds a series of public meetings to inform the public about the budget. The Superintendent or designee shall recommend a budget development process to the Board by October 1. The recommended process must include ways that the public, staff and site council members may offer comments; methods for principals, administrators to provide recommendations; and, times for public testimony. Public hearings shall be held prior to the adoption of the budget or a revised budget.

**BP 3460:** The Superintendent or designee shall keep the Board of Education informed about the district's financial condition. The Board of Education shall assess the district's financial condition on a monthly basis during the academic school year to determine whether or not the district will be able to meet its financial obligations for the remainder of the fiscal year.