

August 27, 2021

U.S. POSTAL SERVICE

Faatimah Muhammad, Director
Impact Aid Program
U.S. Department of Education
400 Maryland Ave., SW
Washington, DC 20202-6244

ELECTRONIC MAIL DELIVERY

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**RE: Equalization Determination Request for a Hearing
FY2022 Determination Under Section 7009(b) of the Elementary and Secondary
Education Act of 1965 (20 U.S.C. § 7709(b))**

Dear Director Muhammad:

The U.S. Department of Education (“Department”) issued its Report for the Fiscal Year July 1, 2021 – June 30, 2022 (State Fiscal Year 2022) Under Section 7009(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 7709(b)) (“Determination”) dated June 30, 2021 to the Alaska Department of Education and Early Development (“Alaska”).

Alaska hereby appeals the Determination of the Department pursuant to 20 U.S.C. §§ 7009 and 7011(a) and 34 C.F.R. § 222.165(a). Specifically, Alaska disputes the Department’s finding that the Alaska state aid formula is not certified under section 7009 for FY2022 and, therefore, cannot take into consideration Impact Aid payments when calculating state aid to districts for FY2022. A copy of the Determination letter is attached.

**I. DATE OF RECEIPT OF THE DETERMINATION LETTER
34 C.F.R. § 222.165(a)(1)**

Alaska certifies that it received the Department’s Determination on June 30, 2021. Therefore, Alaska submits this Equalization Determination Request for a Hearing within 60 (sixty) days of this receipt date. The State is furnishing a copy of this request to all LEAs in the State in accordance with 34 C.F.R. § 222.165(a)(3).

II. BACKGROUND

On March 3, 2021, Alaska submitted to the Department's Impact Aid Program its disparity submission of state fiscal year 2020 data used for fiscal year 2022 certification of its state aid program as equalizing expenditures in order to allow the State to consider payments under Sections 7002 and 7003(b) of the Elementary and Secondary Education Act of 1965 ("ESEA") ("Impact Aid payments"). With that submission, Alaska provided formal notice of its intent to consider Impact Aid payments when allocating state aid to schools for the period of July 1, 2021 to June 30, 2022, in accordance with ESEA § 7009(c)(1).

On March 17, 2021, the Department notified all local educational agencies (LEAs) in Alaska of their opportunity to request a predetermination hearing concerning the State's notice of intent to consider Impact Aid payments. Although no LEA requested a hearing, the Department elected to conduct a predetermination hearing. The hearing was held on June 8, 2021. Two LEAs, Anchorage School District and Galena City School District, participated in addition to the State. Both LEAs testified in favor of Alaska being certified as equalizing expenditures and thus being permitted to consider Impact Aid payments when allocating state aid to schools. Thereafter, the State as well as the Alaska Superintendent's Association submitted post-hearing comments in support of Alaska being certified as equalizing expenditures. On June 30, 2021, the Department issued its Determination.

In its Determination, the Department found that Alaska should include funding from its transportation system in the disparity test. The Department ultimately denied Alaska certification for FY2022, finding that the revenue disparity percentage was not within the 25 percent allowed under Section 7009(b)(2) of the Elementary and Secondary Education Act of 1965 ("ESEA"). Alaska disputes this finding.

III. STATEMENT OF DISPUTED ISSUES OF LAW AND FACT 34 C.F.R. § 222.165(a)(2)

A. The Department Made Mistakes in Both Fact and Law in Finding That the State Did Not Meet the Disparity Test as Presented for Certification.

Alaska challenges the Department's finding that the State must include revenues from its transportation system funding in the disparity test under 34 C.F.R. § 222.162. The transportation system funding is not a part of Alaska's program of state aid for free public education, and as such, transportation system revenues or expenditures covered by the transportation system funding do not qualify as revenue for current expenditures.

By considering a transportation fund beyond Alaska's program of state aid for free public education, the Department expands the scope of the disparity test beyond equalizing local tax

revenues and prevents the State from appropriately incorporating equity concerns into its equalization formula. The Department's interpretation is inconsistent with the law and intent of the disparity test.

The Determination erred by (1) including pupil transportation as a component in applying the disparity test, (2) misapplying the applicable statutes by including pupil transportation as a component in applying the disparity test, (3) changing the long established past practice regarding the disparity test by including pupil transportation as a component in applying the disparity test, and (4) failing to take into consideration the unique nature and approach to the transportation system funding in Alaska. The transportation fund is not a part of Alaska's free public education and, as such, must be excluded from the disparity test.

Accordingly, the transportation system revenues should not be included in the disparity test and the Determination erred in failing to conclude that Alaska met the requirements of the ESEA section 7009(b).

B. Even if the Department's Underlying Findings Are Upheld, Alaska Must be Certified if Deemed to Meet the Disparity Test under an Alternate Method

Alaska met the disparity test and should be certified for FY2022. As detailed above, the Department erred in its determination. Even if the tribunal upholds the Department's application of the test at issue in the underlying hearing, the Impact Aid regulations at 34 C.F.R. § 222.162(d) provide four ways the State may account for special cost differentials when determining the disparity percentage. Accounting for special cost differentials under alternate methods permitted under the regulations, the State may meet the disparity standard. Failure to certify the State as equalized when it meets the disparity standard would be contrary to program purpose and harm the federal interest.

C. Estoppel

The United States Department of Education is estopped.

D. Failure to Recognize Alaska as Equalized for FY2022 Would Harm the Federal Interest

Alaska need meet only one calculation to be certified. To the extent Alaska can demonstrate it met the standard for equalization under multiple, allowable calculations, regardless of whether this tribunal upholds the Assistant Secretary's specific findings at issue in the underlying hearing, there is no actual harm to the federal interest in Alaska's consideration of Impact Aid payments to be received by school districts in FY2022, consistent with Section 7009(b). Rather, if Alaska can pass the disparity test under other calculation options to be certified, then Alaska should be certified to appropriately consider Impact Aid payments in disbursing its state aid to districts for FY2022.

Moreover, the Department's current position would require Alaska to upend its state aid program for public education and have the unintended result of forcing the State to issue state aid for free public education in a manner that significantly dis-equalizes education funding. Consequently, maintaining the Department's determination would create an identifiable harm, rather than resolve one. Given Alaska's equalized state aid system, an adjustment to some LEA allocations can affect the state aid available to other LEAs, ultimately requiring downward adjustments to the remaining LEAs across the state in excess of \$80 million dollars. Such a result is inconsistent with the legislative intent and federal purpose to provide a statutory exception to states that equalize their school finance formula across all school districts in the state and permit such states to account for Impact Aid within that formula. *See generally*, *Tangipahoa Par. Sch. Bd. v. U.S. Dep't of Educ.*, 821 F.2d 1022 (5th Cir. 1987) (applying equitable factors to the U.S. Department of Education enforcement actions and questioning the appropriateness of enforcement when legislative intent was met). The Determination is contrary to the purpose of the ESEA and thus in error.

IV. CONCLUSION

Based on these arguments, Alaska respectfully requests a hearing, pursuant to Section 7009 and 7011(a) of the ESEA and 34 C.F.R. § 222.165. By the submission of this request for a hearing, Alaska does not waive its right to seek other resolution of the matter. Additionally, Alaska requests that the Department allow the parties to present oral testimony at a hearing pursuant to 34 C.F.R. § 222.165(g)(2) to resolve all issues of fact detailed above.

Respectfully submitted,



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