



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

June 30, 2021

Dr. Michael Johnson
Commissioner
Alaska Department of Education and Early Development
801 West 10th Street, Suite 200
Juneau, Alaska 99801-1894

Dear Dr. Johnson:

Enclosed are a certification and related report concluding that Alaska does not meet the requirements of section 7009(b) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). As a result, the State is not eligible to consider a portion of Impact Aid payments as local resources in determining State aid entitlements for the period July 1, 2021, through June 30, 2022 (State fiscal year 2022). This determination is made pursuant to the authority delegated to me by the Assistant Secretary for Elementary and Secondary Education.

A copy of the certification and report is being sent to all school districts in Alaska to inform them of their right to a hearing. The State or any local educational agency adversely affected by this action may request, in writing and within 60 days of the receipt of this notice, a hearing under ESEA section 7009(c)(3)(B) and 34 C.F.R. § 222.165, by sending a hearing request that specifies the issues of fact and law to: Faatimah Muhammad, Director, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202-6244, with a copy emailed to Impact.Aid@ed.gov.

Sincerely,

Faatimah Muhammad, Director
Impact Aid Program

Enclosure
cc: Alaska Superintendents

www.ed.gov

400 MARYLAND AVE., SW, WASHINGTON, DC 20212

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

REPORT FOR THE 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))

State - Alaska

Section I. Background

A. Procedural History

The Commissioner of the Alaska Department of Education and Early Development (Alaska, or State) timely notified the U.S. Department of Education (Department) and all Alaska school districts of the State's intention, under Section 7009(b) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), to take Impact Aid payments into consideration in the calculation of school aid for the period of July 1, 2021 to June 30, 2022 (State fiscal year (FY) 2022). The notice was by letter to this office dated March 3, 2021. The State sent a notice by memorandum to all school districts in the State dated February 22, 2021. On February 24, 2021, the State expressed concerns about the inclusion of pupil transportation funds in disparity data in a phone call to the Impact Aid Program (IAP), and in an email the next day, February 25. IAP responded to these concerns by email on February 26, 2021, stating that “[t]here has been no change to the information we provided in June 2019 regarding the inclusion of these funds in the State’s disparity test data.” IAP explained that if the State continued to submit disparity data using the “inclusion method on a revenue basis” described in 34 CFR 222.162(d)(1), that all revenues for current expenditures must be included in the disparity data, and that pupil transportation revenues met the regulatory definitions of “revenue” and “current expenditures” in 34 CFR 222.161(c). IAP’s email also stated, “You may submit disparity data using any of the four methodologies in the regulations at 34 CFR 222.162(d).” IAP received final State FY 2020 data in support of the request for certification under section 7009(b) on March 3, 2021. This submission contained two sets of data, one that included pupil transportation funds as a revenue for a current expenditure, and one that did not. In its cover letter, the State argued that IAP should use the data set that does not include the transportation funds.

By memorandum dated March 17, 2021, IAP notified all local educational agencies (LEAs, or school districts) in the State of their opportunity to request a predetermination hearing concerning the State's notice, as provided in ESEA section 7009(c)(2) and 34 C.F.R. § 222.164(b)(5). The State’s notice linked to the disparity data posted on the State’s website. However, the State’s website published only the version that did not include pupil transportation funds; under that version, the State would pass the disparity test. The IAP planned to use, as the basis of its FY 2022 determination, the version that did include pupil transportation revenues, pursuant to the definition of “current expenditures” in ESEA section 7013, and consistent with the State’s submissions for FYs 2020 and 2021. This version showed that the State would fail the disparity test for FY 2022. No LEA requested a predetermination hearing in response to our March 17 memorandum. However, because IAP wanted to solicit the views of LEAs on the disparity data that did include pupil transportation revenues and had not been published by the

State, IAP held a predetermination hearing on June 8, 2021, via teleconference. The State participated, as well as representatives from Anchorage School District and Galena School District.

A transcript of the hearing was subsequently provided to all parties.¹ During the hearing, all parties were given 15 days to submit post-hearing comments. The State requested an extension to this deadline and IAP provided a one-day extension because of the need to issue a determination before the start of the State fiscal year on July 1, 2021. IAP received written comments from the State and from the Alaska Superintendents Association (ASA).

B. The Disparity Test Analysis

When determining State aid entitlements to school districts, States are generally prohibited from taking into consideration Impact Aid payments. Under a narrow exception to this general rule, the statute provides that a State may take Impact Aid payments into consideration if IAP “determines, and certifies . . . that the State has in effect a program of State aid that equalizes expenditures for free public education among [school districts] in the State.” (ESEA 7009(b)(1)). The disparity test is the method by which IAP determines whether a State’s program of State aid equalizes expenditures among school districts. *See* 34 CFR 222.162.

A State aid program is determined to equalize expenditures amongst LEAs “if the disparity in the amount of current expenditures or revenues per pupil for free public education among LEAs is no more than 25 percent.” (ESEA § 7009(b)(2) and 34 C.F.R. § 222.162(a)). In making this determination, we disregard LEAs with expenditures or revenues above the ninety-fifth percentile or below the fifth percentile of such revenues or expenditures in the State as required under ESEA section 7009(b)(2)(B)(i) and 34 C.F.R. § 222.162(a). The regulations define “revenue” as including “only revenue for current expenditures.” (34 C.F.R. § 222.161(c)). The disparity test includes all revenues for current expenditures received by districts, regardless of whether they are provided by the State through a State-designated equalization program or under another State funding mechanism. (*See* April 15, 2020, IAP Determination for the State of New Mexico for FY 2020²).

In performing this disparity test, a State must choose to compare current expenditures or revenues and must choose how to account for allowable special cost differentials (funds designated to a district because of specific characteristics of that district or specific characteristics of students in that district). (34 C.F.R. § 222.162(d)). Alaska has chosen the “revenue per Adjusted Average Daily Membership” basis, i.e., the inclusion method on a revenue basis. (34 C.F.R. § 222.162(d)(1)). Under this test, the State first considers each LEA’s revenue for current expenditures in the given fiscal year. Revenues for special cost differentials are included; these are funds associated with “pupils having special educational needs” or “particular types of LEAs.” (34 C.F.R. § 222.162(c)(2)). The State divides this amount by an adjusted pupil count that includes only the membership adjustments for “pupils having special

¹ Available at: <https://impactaid.ed.gov/wp-content/uploads/2021/06/AK-FY-2022-Predetermination-Hearing-Transcript.pdf>.

² Available at: <https://impactaid.ed.gov/wp-content/uploads/2020/04/NM-FY-2020-7009-Determination.pdf>.

educational needs” or “particular types of LEAs.” (34 C.F.R. § 222.162(d)(1)). This is the amount of revenue per pupil that is then compared to that of the other LEAs to determine if the State has equalized revenues.

C. Funding of School Districts in Alaska

As we understand the Alaska public school funding that was in effect for FY 2020, the relevant data year for this determination, funding for public schools consisted of State aid, a required local contribution, and eligible Federal Impact Aid, which we authorized the State to include for FY 2020. Under State law (Alaska Stat. § 14.17.410) each district’s “basic need” is calculated by multiplying the adjusted average daily membership (AADM) by the base student allocation (BSA), which is set by statute (State Comments at 2; *see* Alaska Stat. § 14.17.470). The AADM is the average daily membership adjusted to reflect a district’s size, geographic cost differentials, special needs funding, vocational and technical funds, intensive student funding, and correspondence school funding. (State Comments at 2). The Basic Need is met through a combination of State Aid, local contributions, and eligible Impact Aid. City and borough school districts must contribute a required local amount. The State aid portion of Basic Need equals Basic Need minus a required local contribution and 90 percent of eligible Impact Aid for that fiscal year; the reduction for Impact Aid is based on past certification of the State under section 7009 by IAP.

A district’s eligible Impact Aid is calculated by taking the district’s total Impact Aid, subtracting basic support payments received under ESEA section 7003(a)(2)(B) weighted in excess of 1.0 (children residing on Indian lands), supplemental payments under ESEA section 7003(d) (children with disabilities), and funds received under ESEA section 7003(b)(2) (heavily impacted LEAs) that are in excess of amounts calculated under ESEA section 7003(b)(1) (Basic Support payments). The State multiplies the result by the ratio of the district’s required local contribution to its actual local contribution, as required under ESEA section 7009(d)(1)(B) and 34 CFR 222.161(a)(ii).

After a district’s Basic Need is met, city and borough districts may raise additional funding, up to a cap. (State Comments at 3; *see* Alaska Stat. § 14.17.410). The State legislature may appropriate additional funds in any given year that are outside of the funding formula. These one-time grant funds are distributed in the same manner, based on a district’s AADM, and are included in the disparity test data (State Comments at 3). These revenues meet the Impact Aid definition of revenues for current expenditure. In addition to the Basic Need, the State provides for Quality School Funding on an AADM basis.

School districts that operate a transportation system to convey students to and from school and that are covered by the relevant State law are eligible for transportation funding under AS 14.09.010. The funding amount is determined by multiplying the district’s average daily membership (excluding correspondence students) by an established transportation cost per child. The established cost is based on actual expenditures for transportation from FY 2013, adjusted for inflation in FY 2014 and 2015. School districts report pupil transportation revenues in a special, dedicated revenue fund (State Comments at 9).

Section II. Alaska’s FY 2022 Disparity Calculation

The only changes to the State’s FY 2022 disparity data submission from the one submitted for FY 2021 are: 1) the inclusion of transportation funds; and 2) and exclusion of e-rate revenues, which IAP requested be excluded.³

As required by ESEA section 7009(b)(2)(B)(ii), we take into account the extent to which the State’s program reflects the additional cost of providing free public education in particular types of LEAs or to particular types of students. The data provided to IAP calculated revenues per student on an adjusted average daily membership (AADM) basis. The State adjusted ADM for school size (as defined in Alaska Stat. § 14.17.990), district cost factor (as defined in Alaska Stat. § 14.17.460), special needs and intensive services (as defined in Alaska Stat. § 14.17.420(1)), vocational and technical students (as defined in Alaska Stat. § 14.14.420(3)), and correspondence students (as defined in Alaska Stat. § 14.17.420(2) and Alaska Stat. § 14.17.430). These adjustments meet the qualifications for adjustments as defined in 34 C.F.R. § 222.162(c)(2).

Using Alaska’s submission that includes all revenues for current expenditures, including transportation funding, the revenue per AADM at the ninety-fifth percentile is \$8,029 (Kenai Peninsula Borough School District), and the revenue per AADM at the fifth percentile is \$6,240 (Yupit School District). The resulting disparity is 28.67 percent. Because the disparity is more than 25 percent, the State does not pass the disparity test and is not certified under section 7009 to consider Impact Aid in making State aid payments.

Section III. Arguments Regarding Transportation Funding

A. Pupil transportation funds are separate from an LEA’s general operating fund

1. Arguments from Commenters

Both sets of written comments argue that, because the transportation funding is separate from the general State aid for education and must be accounted for separately by LEAs, it should not be included in the disparity test. ASA states that: “As this funding is separated from overall school funding determined by the foundation formula, we believe it should not be included in the calculation of the Impact Aid disparity test.” (ASA Comments at 1). The State also argues that any “dedicated/special revenues” that are “restricted for a specific use” should not be included in the disparity test. (State Comments at 12.)

³ The e-rate program provides funding for telecommunications services and internet access. (See E-Rate: Universal Service Program for Schools and Libraries, Federal Communications Commission, available at: <https://www.fcc.gov/consumers/guides/universal-service-program-schools-and-libraries-e-rate>.) For our FY 2021 determination, a district argued that e-rate funds should be included; we concluded that it was proper to exclude the funds. (November 19, 2020, IAP Determination for the State of Alaska for FY 2021, available at: <https://impactaid.ed.gov/wp-content/uploads/2021/06/AK-FY-2021-Sec-7009-Determination.pdf>). No commenter addressed e-rate for this fiscal year. Should the State wish to raise the issue of the exclusion of the e-rate funds, it may do so if it applies for certification in a future year.

The State argues that, even though the statute defines “current expenditures” as including pupil transportation, because the term “means expenditures for free public education,” and because the statutory definition of “free public education” does not explicitly include transportation, the definition of “current expenditures” does not necessarily need to include transportation funds. (State Comments at 5-6). The State argues that “dedicated/special revenue funds” like transportation funding are not part of “free public education” and that IAP must look to the “overall statutory scheme” to interpret the term “current expenditures” for purposes of the disparity test. (State Comments at 6.)

2. IAP Analysis

We addressed the issue of State funds that are separate from a State’s general system of State aid to education in our determination regarding the State of New Mexico for FY 2020, in which we stated:

Under the IAP statute and regulations, the disparity test is intended to capture all revenues for current expenditures; there is no narrow focus on only the revenues that the State decides to consider when it equalizes revenues among LEAs. If we were to adopt the State’s argument, any State could pass the disparity test by choosing only a narrow range of revenues or expenditures to equalize, leaving a vast amount of other revenues “outside” of that program which in fact are disequalizing.

(April 15, 2020, IAP Determination for the State of New Mexico for FY 2020). New Mexico had not included transportation in previous years, but in IAP’s recent decision that New Mexico must include all revenues for current expenditures, including revenues that fell outside of New Mexico’s equalization program, transportation revenues were one such external source. *Id.*

Thus, in determining whether the State’s transportation funds are “revenue for current expenditures,” we look not to what the State considers to be its equalization program, but rather to the definition of “current expenditures” in the Impact Aid statute: “current expenditures” means expenditures for free public education, including expenditures for administration, instruction, attendance and health services, *pupil transportation services, . . .*” (ESEA § 7713(4) (emphasis added)). Under this definition, there is no question whether pupil transportation revenue is for a current expenditure. Moreover, the inclusion of pupil transportation revenues is not unique to the Impact Aid statute; the definition of “current expenditures” in section 8101 of the ESEA also includes pupil transportation services. (ESEA section 8101(12)).

The State argues that because the definition of “free public education” does not explicitly include transportation, “current expenditures” does not necessarily include transportation. This is not a method of statutory interpretation that is recognized by courts. Where a statute is clear on its face, further interpretation is not needed. *Pereira v. Sessions*, 138 S.Ct. 2105, 2113 (2018) (citing *Chevron v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984)). That principle applies to this statutory definition. Because pupil transportation is clearly included in “current expenditures,” the State must include the transportation funds.

B. Geographic differences cause pupil transportation revenues to vary widely

1. Arguments from Commenters

The ASA, the State, and the Anchorage School District in its oral comments during the hearing (Trans. at 13-14) all argued that Alaska is different from other states in its pupil transportation needs, due to the State's size and unique geographic features. ASA states that: “[a]s a result of the wide range of costs of transportation across the state, Alaska uses a separate system for funding pupil transportation, ensuring all districts with a transportation program receive funding for the unique transportation needs of their schools.” (ASA Comments at 1). The State argues that to include transportation funding would be “unjust” due to its unique demographic features, and that the State “should not be penalized based on factors over which it has no control.” (State Comments at 11-12.)

2. IAP Analysis

We agree with the assertions that Alaska's geographic factors mean that student transportation costs will vary significantly across school districts. The Impact Aid regulations accommodate States that need to provide varied levels of funding to achieve similar services across school districts, for example, by providing States the option of excluding special cost differentials such as those relating to “geographical isolation” and “sparsity or density of population” (34 CFR 222.162(c)(2)(ii)) under the “exclusion method” (34 CFR 222.162(d)). Under this method, a State would subtract out all revenues or expenditures associated with “special cost differentials” and then divide by the unweighted pupil count. (34 CFR 222.162.(d)(3)-(4)).⁴ The State did not use the exclusion method for its disparity test submission. Instead, it used the “inclusion method on a revenue basis” (34 CFR 222.162(d)(1)), which requires the State to include funds associated with special cost differentials and then divide by a weighted pupil count.⁵

In its discussion of the numerous methods of student transportation in Alaska, including the use of airplanes and other nontraditional vehicles, the State argued that “[t]hese examples represent the very large disparity among districts within the state in regard to their transportation needs,” and that “the varying transportation needs in the state result in inevitable disparity.” (State Comments at 12). It is that very disparity that the disparity test is designed to capture. To the extent that some districts in Alaska receive very large sums from the State for transportation, to ignore those funds is to ignore the disparity that exists between those districts and districts with little or no transportation funding. We understand that Alaska's unique size and geographic factors mean that student transportation costs will differ substantially across school districts and will necessitate substantially different levels of funding per district from the State. However, these disparate amounts must be included in the State's disparity test.

⁴ See, e.g., IAP's analysis of transportation funds in the April 15, 2020, IAP Determination for the State of New Mexico for FY 2020, pp.5-6, available at <https://impactaid.ed.gov/wp-content/uploads/2020/04/NM-FY-2020-7009-Determination.pdf>.

⁵ It is our understanding that the way that Alaska transportation funds are allocated to districts does not involve any student weights; rather the funds are paid on a per-pupil basis, using a dollar amount per district that is based on past data from expenditures per district (State comments at 9; Trans. at 23, 25).

Contrary to the State’s claim that disparate transportation funding is an issue over which it has no control (State Comments at 12), the State legislature does have control over how it provides funds to districts for transportation and other current expenditures. The scheme that the State has established for transportation may not be equalizing (see Trans. at 17, 21; State Comments at 12), but those funding decisions are within the State’s control. None of the commenters claim that the amount of transportation funding provided by the State matches a district’s current need; it is notable that the statutory per-pupil amounts are based on data that has not been adjusted for inflation since FY 2015 (State Comments at 9). One district at the hearing explained that it had a shortfall of transportation funds during the current school year and used general funds for that purpose as well (Trans. at 34).

C. Disparity data for prior fiscal years did not include pupil transportation revenues

1. Argument from the State

The State argues that the Impact Aid program approved the State’s past practice under which for many years the State did not include the transportation revenues in its disparity test data, yet IAP approved the data. (State Comments at 6, 12). The State claims that for IAP to now insist on including transportation revenues would conflict with IAP’s past interpretation of the disparity test requirements. (State Comments at 6).

2. IAP Analysis

First, the State did include transportation funds in its submissions for both of the last two fiscal years (FYs 2020 and 2021), upon IAP’s request to do so.⁶ Second, the fact that the Impact Aid Program approved submissions prior to FY 2020 that did not include transportation funds is not a reason for IAP to ignore the law once it learned that Alaska had a special revenue fund for pupil transportation.⁷ There is no estoppel against the federal government except in very limited situations that do not apply in this case. *See, e.g., Heckler v. Cmty. Health Servs. of Crawford Cty., Inc.*, 467 U.S. 51 (1984); *Watkins v. United States Army*, 875 F.2d 699, 707 (9th Cir. 1989) (finding estoppel applicable only where a Federal agency engages in ongoing active misrepresentations or a “pervasive pattern of false promises”); *Arizona Dep’t of Educ.*, Dkt. No. 91-45-I, U.S. Dep’t of Educ. (Second Order) (Nov. 8, 1991) (Holding that estoppel did not apply in a case under ESEA section 7009).

⁶ In its FY 2020 submission, the State included transportation funding in its disparity test but noted that its transportation funds are not associated with student weights and are reported in a separate special revenue fund. Additionally, the State claimed that its disparity test methodology was approved by IAP in 1989 and by an administrative law judge in a 2013 decision. (We note that the issue of transportation funds was not raised or addressed in that case). Additionally, the State argued that IAP’s continued certifications under section 7009 should be taken as evidence that the State’s disparity test methodology is acceptable.

⁷ As noted earlier, New Mexico had not included transportation in previous years, but in IAP’s FY 2020 decision explaining that New Mexico must include all revenues for current expenditures, including revenues that fell outside of New Mexico’s equalization program, transportation revenues were one such external source.

To the best of our knowledge, IAP was not aware of the separate fund for transportation prior to State’s disparity test submission for FY 2020. IAP never made a statement in any year’s determination that it was proper for the State to exclude these funds. Nor to our knowledge is there any discussion of the separate transportation funds by an administrative law judge in any of the cases involving Alaska. There is thus no “interpretation” of the statute with regard to Alaska transportation funds.

IAP became aware of the pupil transportation fund’s existence in April 2019, during a phone call with the State about its disparity data and a change it was planning to its chart of accounts for FY 2020, which would account for e-rate subsidies in a similar special revenue fund. As this phone call occurred during the analysis of the FY 2020 submission, IAP requested that the State submit revised data for FY 2020 that included the transportation revenues. The State included transportation revenues in its data submissions for both FYs 2020 and 2021 and passed the disparity test in both of those years, with a disparity of 22.05 percent for FY 2020 and 24.37 percent for FY 2021. In the FY 2022 submission that includes the transportation revenues, however, the State does not pass the disparity test.

Section IV. Findings

Pursuant to delegation from the Assistant Secretary for Elementary and Secondary Education to the Impact Aid Program Director, the Alaska State aid formula is not certified under section 7009 for FY 2022, because the revenue disparity percentage is not within the 25 percent disparity allowed under ESEA section 7009(b)(2). Therefore, the State may not take into consideration Impact Aid payments when calculating State aid to districts for FY 2022.

The State or any local educational agency adversely affected by this action may request, in writing and within 60 days of the receipt of this notice, a hearing under ESEA sections 7009 and 7011(a) and 34 C.F.R. § 222.165. A request for a hearing must specify the issues of fact and law to be considered, and should be sent to: Faatimah Muhammad, Director, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202-6244, and with a copy emailed to Impact.Aid@ed.gov.

Approved and Issued By:

Faatimah Muhammad, Director Impact Aid Program	Date