THE STATE of ALASKA
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VIA EMAIL: Alaska.OESE@ed.gov

Adam Schott
Principal Deputy Assistant Secretary
Office of Elementary and Secondary Education
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Re: American Rescue Plan Act and Maintenance of Equity for FY 2023 Funds

Dear Mr. Schott,

We are in receipt of your July 16, 2024, letter requesting a response to the U.S. Department of Education's (the Department's) assertion that the State of Alaska is not in compliance with the Maintenance of Equity (MOEquity) requirement in the American Rescue Plan Act (ARPA) of 2021, for fiscal year (FY) 2023 funds.

As you know, Alaska has engaged in significant communication with the Department, at multiple levels, in an attempt to resolve the discrepancy between the Department's position and Alaska's position for both FY 2022 and FY 2023. Please refer to our prior written communications, particularly our April 5, 2024, letter, for our full position on this issue. We also summarize that position here and provide some additional information specific to FY 2023, in response to the Department's request.

First, we request from the Department a full explanation of all calculations used to arrive at the amount the Department states that Alaska owes to four school districts, outlined in Table 1 of your July 16 letter. The Department's letter simply states that Alaska has not yet demonstrated compliance with the maintenance of equity requirement for three high-need LEAs and one high-poverty LEA and a statement of what the Department asserts Alaska owes these LEAs. But the Department does not identify which LEA falls within each category, or provide any calculations used to arrive at these

figures.[1] The Department cites only to Alaska's data submission, but this spreadsheet contains over two thousand cells of information, none of which explain or contain the final numbers in Table 1.

Second, we note that the Department's letter states that the approximately $5.5 million that Alaska allegedly owes to school districts "may not reflect the full scope of Alaska's FY 2023 maintenance of equity compliance issues." Although these figures are apparently preliminary, the Department asserts Alaska must submit information regarding how and when supplemental payments will be made to these school districts or else the Department "may take appropriate enforcement actions," including recovery of ARPA ESSER funds.

Given the preliminary nature of the Department's assessment, it is premature for the Department to expect Alaska to comply with or refute the Department's current demand. As we've noted previously, the Department has changed its assessment of what Alaska owes several times already. For example, for FY 2022, the Department demanded Alaska expend about $8 million in December of 2023; about $22 million in March of 2024; and about $12 million in April of 2024. If Alaska had complied with the Department's demand on March 18, 2024, it would have paid almost double what the Department ultimately concluded Alaska owes. Given the Department's own assessment in the July 16 letter that its demand to pay $5.5 million may not be final, Alaska requests that the Department either confirm as final the amounts it claims Alaska owes and provide an explanation of how it calculated those amounts or postpone any further proceedings until the Department can provide this information.

Third, we reiterate our consistent position that Alaska has complied with the maintenance of equity (MOEquity) provision. As you are aware, the MOEquity provision is a first-of-its-kind condition on a federal grant to the states, which provides that a state educational agency "shall not in fiscal year 2022 or 2023, reduce State funding (as calculated on a per-pupil basis)" for a high-need school district "by an amount that exceeds the overall per-pupil reduction in State funds" for all school districts. Likewise, the provision provides that for fiscal years 2022 or 2023 the State shall not "reduce State funding (as calculated on a per-pupil basis) for any highest poverty" school district "below the level of funding (as calculated on a per-pupil basis)" provided to each school district in 2019.[2]

Alaska complied with the plain language and purpose of the MOEquity condition. There is no factual dispute that Alaska did not reduce per-pupil education funding to schools in FY 2021, FY 2022, and FY 2023. Instead, Alaska continued to fund education

[1] While the Department's April 11, 2024, letter contains some further information on Department's position on FY 2023 funding, it does not contain an explanation of how the Department calculated the amounts it claims Alaska owes.

[2] Public Law 117-2, Sec. 2004;135 STAT. 24-25.

according to its statutory per-pupil formula and there were no school districts in which per-pupil funding from the state was reduced. In fact, in 2022 the legislature increased the state's base student allocation (BSA) for per-pupil spending to districts from $5930 to $5960, effective FY 2024.[3]

Unfortunately, the Department's application of the MOEquity provision to Alaska has so far steered away from the plain language of the provision. Rather, the Departments' approach involves mathematical equations and statistical analysis that do not exist in statute or in regulation and fail to properly address Alaska's unique education funding system provided on a per-pupil basis. The fundamental problem from our perspective is that the law is clear and there is no dispute that Alaska never reduced per-pupil funding. In such circumstances, Alaska is entitled to rely on the clear language and purpose of the provision and not be threatened with financial and reputational harm by a federal agency. As the Supreme Court has made clear "many times over many years. . . when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration."[4]

Moreover, even if the MOEquity provision is somehow considered ambiguous by your office such as to justify guidelines and interpretations issued by the agency, that is not a license to penalize Alaska. To the contrary, the Supreme Court has made clear that the federal authority to place conditions on acceptance of federal funds "does not include surprising participating States with post-acceptance or retroactive conditions"[5] and that "if Congress intends to impose a condition on the grant of federal moneys it must do so unambiguously."[6] And as a practical matter, it is simply hard to understand why there has

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[3] AS 14.17.470.

[4] *Bostock v. Clayton County, Georgia*, 590 U.S. 644, 673-674 (2020).

[5] *National Federation of Independent Businesses v. Sebelius*, 567 U.S. 519, 584 (2012) (quoting *Pennhurst State School and Hospital v. Haldernan*, 451 U.S. 1, 17 (1981)).

[6] *Id.* at 583. The reason for this constitutional check on penalizing states over a failure to comply with a federal agency's interpretation of an ambiguous grant condition is important and should be respected. As explained by the Supreme Court, conditions placed on federal grants to states should not be used to effectively coerce a state into adopting the federal government's position on how a state program should be implemented. Chief Justice Roberts warned in *Sebelius* that "[r]especting this limitation [on the federal government's authority under the Spending Clause] is critical to ensuring that Spending Clause legislation does not undermine the status of the States as independent sovereigns in our federal system … Otherwise the two-government system established by the Framers would give way to a system that vests power in one central government and individual liberty would suffer." 567 U.S. at 577.

been any question that Alaska complied with MOEquity given the undisputed facts. Alaska has an equalized per-pupil funding formula adopted by our state legislature. Alaska's funding formula contains several components to ensure equitable funding across districts, such as a school size factor[7] and district cost factor[8] and is responsive to Alaska courts' constitutional concerns about inequity in relation to rural Alaska children.[9]

Another office of the Department has concluded several times that Alaska has an equalized program of education funding that passes the disparity test under the Impact Aid Program; and our state's education funding system has been recognized nationally for its equitable nature.[10] For all these reasons we request the Department reconsider its determination that Alaska has not complied with the MOEquity provision in law.[11]

Finally, the July 16 letter requested that Alaska, within 30 calendar days, submit to the Department a plan demonstrating that it is actively working to resolve its FY 2023 maintenance of equity compliance issues. While we disagree with the Department's assessment, we provide the following information. Expenditures of state funds require an appropriation from the Alaska legislature.[12] The appropriation process is set out in the Executive Budget Act.[13] In accordance with state law, the Governor may submit

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7 AS 14.17.450.

8 AS 14.17.460.

9 *Kasayulie v. State* 3AN-97-3782 CI, 1999 WL 34793400 (Alaska Superior Court, September 1, 1999) (Court found that the method of funding school construction projects violated the State Constitution's equal protection and education clauses and Title VI of the Civil Rights Act because it discriminated against rural school children.).

10 Baker, Bruce D., DiCarlo, Matthew, Weber, Mark. *The Adequacy and Fairness of State School Finance Systems,* Albert Shanker Institute, University of Miami School of Education and Human Development, and Rutgers Graduate School of Education (2024), https://www.schoolfinancedata.org/wp-content/uploads/2024/02/SFID2024_annualreport.pdf, at p. 20. (Last visited April 1, 2024); Farrie, Danielle Ph.D., Kim, Robert, Sciarra, David G., *Making the Grade 2019, How Fair is School Funding in Your State,* Education Law Center (2019) www.edlawcenter.org, at p. 1 (Last visited April 1, 2024);

11 We also specifically incorporate Alaska's position that the Department should exclude "hold harmless" funding from its calculations, as conveyed several times, most recently in Alaska's August 14, 2024, Show Cause filing, in response to the Department's July 30, 2024, letter. The Department's guidance reasonably supports the conclusion that DEED should have been permitted to exclude hold harmless funding from its calculation.

12 Alaska Const., art. IX, sec. 13; AS 14.17.300 (The public education fund consists of appropriations for distribution to school districts).

13 AS 37.07.010- 07.130.

supplemental appropriation requests to the legislature for consideration. Alaska's 33rd Legislature ended on May 15, 2024. Any supplemental appropriation would need to be considered by the 34th Legislature during the next legislative session, which begins on January 21, 2025.

At this point, we have included in our prior correspondence all of the relevant information regarding Alaska's funding of education, the unique conditions in Alaska and our legal analysis of what is and is not permitted when placing conditions on grants to the states. This information clearly demonstrates that Alaska has met the Maintenance of Equity condition in ARPA.

We look forward to hearing back from you and answering any remaining questions regarding Alaska's unique challenges in providing an equitable education, or the State's equitable formula.

Sincerely,

Deena Bishop
Commissioner
Department of Education & Early Development