



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

**Department of Education  
& Early Development**

OFFICE OF THE COMMISSIONER

333 Willoughby Ave., 9<sup>th</sup> Floor, SOB  
P.O. Box 110500  
Juneau, Alaska 99811-0500  
Main: 907.465.2800  
TTY/TDD: 907.465.2815  
Fax: 907.465.2806

April 5, 2024

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

Re: American Rescue Plan Act (“ARPA”) and Maintenance of  
Equity (“MOEquity”)

Dear Mr. Schott:

We are in receipt of your letter of March 27, 2024.<sup>1</sup> Although disappointed, we are hopeful that after review of this request for reconsideration the United States Department of Education (USDOE) will agree that Alaska meets any reasonable interpretation of the Maintenance of Equity provision in the American Rescue Plan Act (“ARPA”), or, at a minimum, USDOE will consider removing the amounts associated with Alaska’s unique hold harmless and pupil transportation provisions when coming to a determination. Despite our disagreement with how this provision should be applied, we are committed to continuing our dialogue and finding a resolution that works for USDOE and for Alaska.

USDOE’s letter mentioned feeling as if some of the information presented in our last letter was presented for the first time. We apologize if there was a misunderstanding. We have all along asserted that Alaska’s equalized funding formula ensured we met the maintenance of equity requirement. We have diligently engaged in exchanging data and in many conversations over the past 18 months in the hope that further explanation and sharing of data would illustrate our compliance. It was only upon receipt of your March 18 letter that it became clear that our efforts had not yet gotten us to a mutually agreeable resolution. We still believe that can be achieved. We also feel that we need to take this opportunity presented by the latest invitation to request reconsideration to fully outline our perspective on this issue.

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<sup>1</sup> The March 27 letter contended that Alaska was in part non-compliant with the maintenance of equity requirement and placed a condition on the State’s ARP ESSER award (S425U210020) and a designation of high risk for this grant.

Alaska’s education funding system is based constitutionally and statutorily on the principle of equitable funding between rural and urban districts in Alaska. This focus on equity has not only been recognized by Alaska’s courts – but USDOE has recognized that Alaska “equalizes expenditures” among local school districts and outside education experts have identified Alaska as a national leader in ensuring that education funding is provided in an equitable manner. This equalized funding approach did not change during the COVID-19 pandemic. Alaska did not reduce per pupil state spending on education in any of our school districts in order to take advantage of federal funds. In these circumstances, we see no reason why Alaska’s equalized education funding formula should not be considered consistent with the first-of-its-kind “equity” provision included in section 2004(b) of the American Rescue Plan (ARP).

Below we outline some important issues for your consideration including a description of Alaska’s equalized funding system, applicable law regarding the interpretation of federal statutes including in the context of grant programs such as ARPA, and a review of how we see USDOE and Alaska working together to address any remaining issues. We look forward to continuing the discussion.

**A. Alaska’s education funding system is constitutionally based and equalizes funding among rural and urban school districts.**

The constitutional underpinnings of school funding in Alaska arise under two provisions of the Alaska Constitution – the Education Clause and the equal protection clause. The Alaska Constitution states:

The legislature shall establish and maintain a system of public schools open to all children of the State and may provide for other public educational institutions.<sup>2</sup>

The Alaska Constitution further guarantees:

[E]qual rights, opportunities, and protection under the law.<sup>3</sup>

Alaska’s courts have applied these constitutional rules to the provision of public education in order to ensure that the state’s education funding system is fair in its distribution of state funds to schools throughout the state, including to its widely dispersed rural and remote communities that face unique challenges given the vast scale of the state. Significantly, these communities are often primarily populated by the state’s Alaska Native children. For example, the Alaska Superior 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

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<sup>2</sup> Alaska Const., art. VII, Sec. 1.

<sup>3</sup> Alaska Const., art. I, Sec. 1.

children.<sup>4</sup> The Alaska Legislature acted to correct these deficiencies in funding. The Alaska Supreme Court has recognized that the school funding formula established by the Legislature “is intended to equalize districts by providing them with needed resources, taking into account differences among districts.”<sup>5</sup>

The Alaska Legislature has implemented these constitutional responsibilities by establishing an education funding formula in state law. In designing an equitable system, the Legislature recognized that an education dollar in the hands of a district that faces extraordinary costs does not buy as much education as a dollar in the hands of a district with lower costs. To address the inequity caused by high cost, Alaska adjusts the funding that a district will receive through a formula based on a district's cost.<sup>6</sup> The formula in Alaska law provides that state aid equals “Basic Need”<sup>7</sup> minus the minimum required local contribution and 90 percent of eligible federal impact aid. The determination of Basic Need starts with the average daily membership, or “ADM,” which is the number of students enrolled in the school during the 20-school day count period ending the fourth Friday in October.<sup>8</sup> The ADM is then adjusted to reflect the formula components that compensate for a district’s school size, geographic cost differentials, special needs funding, vocational and technical instruction funding, intensive student funding, and correspondence school funding to arrive at an adjusted average daily membership, or “AADM.” These adjustments are important to rural Alaska districts because they recognize that it costs more to educate a child in remote districts. The AADM is then multiplied by the Base Student Allocation (BSA) to arrive at Basic Need, the total amount of funding provided by the formula.<sup>9</sup>

The components of Basic Need that must be funded vary, depending on whether the district is organized. Districts that are municipalities or boroughs with taxing authority have a minimum local requirement to contribute to Basic Need.<sup>10</sup> Some districts, called Regional Educational Attendance Areas (or “REAs”), are in the unorganized part of the state, and these districts do not have taxing authority. The state takes up to 90 percent of eligible impact aid into account when computing a district’s state aid

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<sup>4</sup> *Kasayulie v. State* 3AN-97-3782 CI, 1999 WL 34793400 (Alaska Superior Court, September 1, 1999).

<sup>5</sup> *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 88 (Alaska 2016). Notably, the Supreme Court has stated that state legislatures are entitled to deference over how they raise and distribute state revenues for local purposes. *San Antonio Local School District v. Rodriguez*, 411 U.S. 1, 40 (1973).

<sup>6</sup> AS 14.17.460. We note that the state is the primary source for financing schools, and, as a result, district wealth is not determinative of school funding.

<sup>7</sup> AS 14.17.410(b)(1).

<sup>8</sup> AS 14.17.410; AS 14.17.600.

<sup>9</sup> AS 14.17.470.

<sup>10</sup> AS 14.17.410(b)(2). All boroughs and home rule or first-class cities are school districts. Not all districts, however, are municipalities. AS 14.08.031.

entitlement.<sup>11</sup> After Basic Need is met, city or borough school districts are allowed to contribute additional funding, up to a cap.<sup>12</sup>

Another component of Alaska’s funding formula that may impact a district’s funding is the hold harmless provision. This provision provides that if a school district's AADM adjusted for school size decreases by five percent or more from one fiscal year to the next fiscal year, the school district may use the last fiscal year before the decrease as a base fiscal year to offset the decrease.<sup>13</sup> The Legislature enacted this provision in 2008 to provide a declining enrollment cushion for those school districts experiencing a natural reduction in their brick and mortar student count. This provision was enacted well before the COVID-19 pandemic. What changed following the COVID-19 pandemic is that hold harmless was no longer just filling in for the natural reduction in student population but also for the switch from attending brick and mortar to correspondence schools. This created a unique situation for Alaska, as it has very robust correspondence schools throughout the state that are operated by school districts. Our correspondence schools are also critical for ensuring access to education given Alaska’s vast and remote settings. With many families choosing to switch from brick and mortar to public correspondence school, that meant a decline in enrollment at the brick and mortar (triggering hold harmless) and an increase in correspondence enrollment (which resulted in some districts being paid again for correspondence students enrolled in a district correspondence program). We suggest this puts Alaska in a very unique position.

**B. Alaska’s education funding system has been approved by the USDOE as an equalized program for school funding and Alaska has been recognized as a national leader in equitable education funding.**

As noted above, USDOE’s Impact Aid Program has, during the same time frame as applicable to this matter, certified that Alaska “has in effect a program of State aid that equalizes expenditures for free public education among [school districts] in the State,” under federal law.<sup>14</sup> In order for a state to be able to consider federal impact aid in the calculation of state aid, it must request and receive certification from USDOE that its state aid program equalizes expenditures among school districts, which

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<sup>11</sup> AS 14.17.410(b)(1); 34 CFR 222.163(b)(2) (“In cases where there are no local tax revenues for current expenditures and the State provides all of those revenues on behalf of the LEA, the State may consider up to 100 percent of the funds received under the Act by the LEA in allocating State aid.”)

<sup>12</sup> AS 14.17.410(c).

<sup>13</sup> AS 14.17.410 (b)(1)(E).

<sup>14</sup> *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))*, (September 26 2022), U.S. Department of Education, Impact Aid Program, at p. 4-5. (“Pursuant to delegation from the Assistant Secretary for Elementary and Secondary Education to the Impact Aid Program Director, the Alaska State aid formula meets the requirements to be certified under section 7009 for FY 2022, because the revenue disparity percentage is within the 25 percent disparity allowed under section 7009(b)(2). Therefore, the State may take into consideration Impact Aid payments when calculating State aid to districts for FY 2022.”)

is determined under the federal disparity test. Under that test, USDOE reviews current expenditures or revenues amongst school districts and the state passes the test if the disparity in the amount of current expenditures or revenues per pupil for free public education among school districts is no more than 25 percent.<sup>15</sup> For fiscal years 2022 and 2023, USDOE determined that Alaska passed the disparity test and has an equalized program of education funding.<sup>16</sup> Likewise, USDOE determined that Alaska met the Maintenance of Effort requirements included by Congress in the federal COVID-19 relief bills including ARPA and the earlier CARES and CRRSA Acts.<sup>17</sup>

Finally, independent research studies have favorably reviewed Alaska’s school funding for its equity. For example, a 2019 study reviewed state education funding and considered the fairness of funding in each state, as measured by funding level, funding distribution, and funding effort.<sup>18</sup> The researchers assigned grade levels to each state and gave Alaska an “A” for funding level and funding distribution and a “B” for funding effort.<sup>19</sup> The same study ranked Alaska first in progressive funding distribution, stating “[f]or example, Alaska has a progressive funding distribution so that, on average, its high poverty districts (30% Census poverty) receive 72% more per pupil funding than its low poverty

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<sup>15</sup> ESEA 7009(b)(2) and 34 CFR 222.162(a).

<sup>16</sup> *Report for the Year July 1, 2022 – June 30, 2023 (State Fiscal Year 2023) Under Section 7009(B) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 7709(b))*, (March 17, 2023), U.S. Department of Education, Impact Aid Program, at p. 4. For FY22 the Department initially denied Alaska’s request for certification, but after Alaska submitted revised disparity data under a different methodology, the Department determined “the Alaska State aid formula meets the requirements to be certified under section 7009 for FY2022.”

<sup>17</sup> We note that in a dispute over the meaning of “state financial support” under another federal education law, a USDOE administrative law judge (ALJ) found that the agency’s interpretation of the law was not entitled to deference because the Supreme Court has determined that “deference is owed to state legislatures’ governance over how it raises and disburses state and local tax revenues for local interests.” The decision concluded, “[i]n the absence of any clear and explicit language in the IDEA statute or regulations, deference is owed to the Wyoming legislature’s statute instruction that the funds at issue be treated as “state revenues.”<sup>17</sup> *In the matter of Wyoming Department of Education*, IDEA Proceeding, No. 22-38-O, at 12 (April 17, 2023) <https://oha.ed.gov/oha/files/2023/04/2022-38-O.pdf> (last visited April 3, 2024). The U.S. Secretary of Education affirmed this decision and found that Wyoming had met the federal “Maintenance of State financial support” requirement. *In the matter of Wyoming Department of Education*, IDEA Determination, No. 22-38-O, at 7 (June 23, 2023) <https://oha.ed.gov/oha/files/2023/06/2022-38-O-S.pdf> (last visited April 3, 2024).

<sup>18</sup> 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](http://www.edlawcenter.org), at p. 1 (Last visited April 1, 2024).

<sup>19</sup> *Id.* at 3.

districts (5% Census poverty).”<sup>20</sup> In other words, the study found that Alaska had done the best in the nation in allocating per pupil funds to high poverty districts, which were most in need of funding.

More recently, a study by Rutgers University and the University of Miami ranked Alaska second in the nation for 2021 state and local K-12 funding, based on statewide adequacy, fiscal effort, and equal opportunity.<sup>21</sup> The researchers found that “Wyoming and Alaska, with their high effort and widely adequate funding coupled with only moderately unequal opportunity, top the list with scores of 97 and 95 [out of 100].”<sup>22</sup>

**C. Alaska’s school funding law is equitable and the Legislature’s funding of education complied with the plain language and intent of the MOEquity provision.**

We understand that USDOE is in the unenviable position of having to evaluate every state’s unique school funding statutes and appropriations and determine whether maintenance of equity has been met. This is a difficult task at best. We hope the information above helps illustrate why Alaska so clearly meets the maintenance of equity since there was no reduction in appropriations for education or any changes to our equalized school funding formula that impacted districts on a per pupil basis.

It is well established that acts of Congress are to be interpreted and applied according to their plain language and purpose. 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.”<sup>23</sup>

Here, the MOEquity provision 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 MOEquity 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.<sup>24</sup>

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<sup>20</sup> *Id.* at 7.

<sup>21</sup> 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](https://www.schoolfinancedata.org/wp-content/uploads/2024/02/SFID2024_annualreport.pdf), at p. 20. (Last visited April 1, 2024).

<sup>22</sup> *Id.* at 19.

<sup>23</sup> *Bostock v. Clayton County, Georgia*, 590 U.S. 644, 673-674 (2020).

<sup>24</sup> Public Law 117-2, Sec. 2004;135 STAT. 24-25.

The clear intent of this provision is to prohibit states from cutting state education funding on a per-pupil basis for students in high needs or highest poverty school districts beyond any cuts applied to all school districts. USDOE’s FAQs recognized this clear purpose: “.., if State or local funds are cut, the maintenance of equity provisions ensure that LEAs and schools serving a large share of students from low-income backgrounds do not experience a disproportionate share of such cuts in fiscal years (FYs) 2022 and 2023.”

Alaska’s funding during fiscal years 2019-2023 was entirely consistent with congressional intent. It did not reduce per-pupil spending on education. Quite to the contrary, Alaska funded education in accordance with its existing equalized funding law during fiscal years 2019-2023. Thus, it did not reduce state funding in order to take advantage of federal COVID funds, and it distributed the ARPA education funding to school districts in accordance with federal law.<sup>25</sup>

**D. For a State with an equalized per pupil funding formula, there was no way to know how to comply if simply maintaining funding and distribution in the same historical manner was insufficient.**

From the State’s perspective, it complied with the plain language and purpose of the MOEquity provision. But if there is any ambiguity here, its source is how to apply the MOEquity provision to a state, such as Alaska, with an equitable funding law that is based on per-pupil funding, which will always result in increases and decreases in individual school district funding because the funding is based on student enrollment each year. This is not a reduction or a cut—it is simply how the state formula works and has worked since its inception. It is also what ensures districts get the money they need for the student population they have in any given year.

We note that since the MOEquity provision was enacted, the USDOE has issued guidance and updates to that guidance through 2021, 2022, and 2023. USDOE did not issue its final guidance on the provision until January 23, 2023,<sup>26</sup> nearly two years after the provision was enacted. The changes to USDOE guidance on implementation of the MOEquity provision, the lack of a formal waiver process, and the fact that individual state compliance has not been made public by USDOE has made it difficult for

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<sup>25</sup> And Alaska complied with the FAQs issued by USDOE which stated: “.., if State or local funds are cut, the maintenance of equity provisions ensure that LEAs and schools serving a large share of students from low-income backgrounds do not experience a disproportionate share of such cuts in fiscal years (FYs) 2022 and 2023, and that the highest poverty LEAs do not receive a decrease in State funding below their FY 2019 level.” Alaska did not cut state funds during this period. *Frequently Asked Questions, American Rescue Plan Elementary and Secondary School Emergency Relief (ESSER) Program, Maintenance of Equity Requirements* (January 23, 2023), U.S. Department of Education, [https://oese.ed.gov/files/2023/01/2023-01-23-Update\\_22-0471-moequity-FAQs\\_Final-Version.pdf](https://oese.ed.gov/files/2023/01/2023-01-23-Update_22-0471-moequity-FAQs_Final-Version.pdf) (last visited April 3, 2024).

<sup>26</sup> Guidance documents of course do not have the force of law as they are not equivalent to agency rule making which involves notice and comment periods.

Alaska to understand the scope of state issues and understand the rationale USDOE is applying across states when signaling compliance.<sup>27</sup>

Austin Reid, the Federal Affairs Advisor of the National Conference of State Legislatures appeared before the Alaska Senate Education Committee on April 3, 2024, and made several important points based on his involvement with USDOE and state departments of education. Mr. Reid prepared a written summary of the implementation of the MOEquity provision in which he noted that USDOE interpreted the MOEquity provision to apply even if a state did not enact a statewide reduction in education spending which was “a major update - to my eyes, and some others, a plain language reading of the law supported the interpretation that Maintenance of Equity only applied in instances where state education budgets were cut.”<sup>28</sup> Mr. Reid also noted that USDOE effectively waived the MOEquity provision for local education agencies (but not for states) based on the reasoning that local districts experienced “fluctuating school enrollments and uncertain revenue collection as a result of the pandemic.”<sup>29</sup> He also pointed out that the NCSL Standing Committee on Education “has adopted policy pertaining to the Maintenance of Equity provision, urging the federal government to provide states with full waivers and maximum flexibility, NCSL believes that state education finance decisions are solely a matter of the states, owing to the plenary power they have in education.”<sup>30</sup> Mr. Reid stated in his conclusion:

To my knowledge, the Maintenance of Equity provision is the first time the federal government has been given a direct interest in state education finance decisions.

The decision by the U.S. Department of Education to apply this provision in the absence of overall state funding cuts, without providing an opportunity for states to seek waivers, has led to considerable complications for states and given the federal government

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<sup>27</sup> The difficulties of navigating this process are illustrated by recent shifting positions from USDOE. In December of 2023 USDOE reported that Alaska was out of compliance under the MOEquity requirement, and thus owed to school districts, \$7,846,060 for FY 2022. While USDOE noted that this figure may not reflect the full scope of compliance issues in Alaska, just three months later USDOE reported a significantly higher figure for FY 2022. On March 18, 2024, USDOE claimed that Alaska owed to school districts \$22,389,141 for FY 2022 and \$7,188,772 for FY 2023.<sup>27</sup> In other words, the amount USDOE claimed that Alaska owed to school districts jumped from around 8 million in December 2023 to almost 30 million in March 2024.

<sup>28</sup> Summary of the Implementation of the Federal “Maintenance of Equity” Provision, Austin Reed, April 3, 2024, presentation to the Alaska Senate Education Committee.

[https://www.akleg.gov/basis/get\\_documents.asp?session=33&docid=32764](https://www.akleg.gov/basis/get_documents.asp?session=33&docid=32764)

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*



unprecedented influence over state education finance decisions. Given the states plenary authority in education, this is an unusual and, in some ways, extraordinary federal authority.<sup>31</sup>

With this background, it is important to note that if an ambiguity exists, it does not require that a state change its equitable funding of education in order to qualify for a federal grant – and that states retain their sovereign authority over basic issues such as school finance.

Under the Constitution, the federal government has the ability to place some conditions on a state's acceptance of federal funds.<sup>32</sup> But the Supreme Court has made clear that this ability “does not include surprising participating States with post-acceptance or retroactive conditions”<sup>33</sup> and that “if Congress intends to impose a condition on the grant of federal moneys it must do so unambiguously.”<sup>34</sup> The Supreme Court has not shied away from enforcing this constitutional rule. For example, in *Pennhurst State School and Hospital v. Haldernan*<sup>35</sup> the Court ruled in favor of Pennsylvania in a suit regarding a federal grant which was subject to conditions that the state contended were ambiguous. Similarly, in *National Federation of Independent Businesses v. Sebelius*<sup>36</sup> the Supreme Court determined that the Medicaid expansion provisions of the Affordable Care Act went beyond what the states would have expected when they had agreed to participate in Medicaid and accept federal funds. Further, in the context of ARPA the Eleventh Circuit ruled last year that a condition placed on states' receipt of federal grant money that sought to restrict states' taxation authority (an offset condition) violated the Spending Clause because of its ambiguity.<sup>37</sup>

Moreover, as noted above, Alaska's equalized education funding formula has been set by the Alaska Legislature and is based on two state constitutional requirements: that the Legislature establish a system of education and that all Alaskans, urban and rural, are entitled to equal protection under Alaska law. Given the fact that school funding in Alaska is carefully constructed to meet these state conditions and legal requirements, it is important to recognize that the Supreme Court has warned that 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. For example, 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

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<sup>31</sup> *Id.*

<sup>32</sup> *See South Dakota v. Dole*, 483 U.S. 203 (1987).

<sup>33</sup> *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)).

<sup>34</sup> *Id.* at 583.

<sup>35</sup> 451 U.S. 1 (1981).

<sup>36</sup> 567 U.S. 519 (2012).

<sup>37</sup> *West Virginia v. U.S. Department of the Treasury*, 59 F.4<sup>th</sup> 1124 (11<sup>th</sup> Cir. 2023).

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.<sup>38</sup>

Here, the MOEquity provision was a first-of-its-kind provision not previously attached to federal education grant funding and it was attached to emergency funding during a pandemic. If the plain language and intent of the bill is not applied and instead MOEquity is considered an ambiguous provision, Alaska should not be penalized by requiring it to expend substantial additional funds in a manner that is contrary to its established equitable funding system. A requirement otherwise would be contrary to the Supreme Court's mandate that conditions placed on the receipt of federal money must be unambiguous, not beyond what a state would have expected when it agreed to accept federal funds, and not result in an undermining of the State's sovereign authority to manage its affairs on a critical state issue such as education funding. In particular here, if the State had managed to understand and comply with the current articulation by your office of the MOEquity provision, this would have required the legislature to *not* distribute money under the statutorily required state funding formula but rather to have changed the distribution to give more money to four urban districts—resulting in less money to other school districts in the state. Since there would have been no way to know Alaska had to change its funding formula, there would have been no way to avoid being in the position we are now in an attempt to retroactively make payments to some districts, which creates inequity with other districts.

**E. There is a reasonable path forward that can assure USDOE that the purpose of the MOEquity provision is satisfied without interfering with Alaska's constitutionally based equalization law that protects the interests of Alaska's rural communities and children.**

Alaska considers Congress's intent in including the MOEquity provision to be clear – a prohibition against reducing state per pupil spending while taking ARPA education funding – and Alaska complied with the provision. However, even under the Office of Elementary and Secondary Education's interpretation there would seem to be a reasonable means to resolve this matter. On this point, we note that USDOE has indicated some flexibility through its various regulations, guidelines, and A Dear Colleague letter as well as its interactions with other states.

We think it would be reasonable and equitable to accommodate Alaska's equalized per-pupil funding approach to education funding – a system of school funding that has been nationally recognized for its focus on equity. As we understand the USDOE position, a reduction in state funding due to a decline in student enrollment may violate the MOEquity provision. This interpretation should be reconsidered because as noted above it is unfair and inequitable to a state like Alaska that funds education on a per-pupil basis. The per-pupil funding formula will always result in some increases and decreases in overall state funding to particular school districts because the funding is linked to the

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<sup>38</sup> 567 U.S. at 577.

number of students enrolled in a district each year and the needs of those students. That is not an inequitable approach to school funding.

Moreover, such an interpretation would be contrary to Congress's intent in enacting the equity provision. Congress was not trying to freeze state education spending in relation to school districts with declining enrollment – a process that would itself inevitably create inequitable results by providing more state money for some school districts in comparison to others simply because they experienced a decline in enrollment.

Accordingly, we seek reconsideration from the Office of Elementary and Secondary Education's conclusion that a reduction in state education funding to a particular school district violates the MOEquity provision, even when the reduction is caused by a decline in student enrollment rather than a reduction in state funding directed at any high-need or highest-poverty school district. Moreover, reconsideration would be appropriate and consistent with USDOE's approach to local MOEquity where the department exempted local educational agencies for the same reason: fluctuating school enrollments.

**F. A second reasonable approach would remove Alaska's unique hold harmless provision from the calculations for determining the state's compliance with MOEquity.**

A simple adjustment to the USDOE's application of the MOEquity provision to Alaska's school funding during the COVID-19 pandemic would also likely resolve this matter. As has been communicated and discussed with USDOE multiple times, the state's funding formula contains a hold harmless provision which was enacted long before the COVID-19 pandemic. This provision, especially post pandemic, revealed a unique characteristic of our state funding formula that affects the USDOE's MOEquity calculations. Hold harmless payments have skewed comparisons between school districts and do not provide an accurate reflection of annual comparisons among individual school districts as well as student enrollment. The hold harmless provision was enacted as a way to help school districts cope with a natural reduction in their brick-and-mortar schools' ADM. Since its inception, the hold harmless provision was mainly triggered by smaller school districts because their shifts in enrollment from year to year had larger effects on funding in comparison to the larger districts that experience shifts in enrollment. This may be similar to other states, but what is unique to Alaska is how this provision ended up impacting funding during the COVID-19 pandemic.

In school year 2020-2021 (the foundational years for comparison purposes under ARPA), Alaska experienced an overall reduction in ADM from the prior year. But what also occurred was a sizable shift of student enrollment from brick-and-mortar schools to district correspondence programs as students were learning from home for long periods of time and many families decided to move to an established correspondence program rather than their brick and mortar school. This was identified when looking into individual districts. Many districts (including the large ones) experienced reductions in their student enrollment from their brick-and-mortar schools and saw increases in their district correspondence program enrollment. When this occurred, the district (1) experienced a five percent or greater adjustment for school size reduction which triggered hold harmless and gave the district back 75 percent of their reduction, plus (2) the district was essentially paid again for those same students as a correspondence student in the district's correspondence program.

The overall ADM itself was not doubled for a district, but the funding essentially resulted in a skewing effect on the overall funding per ADM from year-to-year, both for district-to-district comparisons as well as annual comparisons among individual districts. This in turn has affected USDOE's MOEquity calculations, especially as the ADMs continued to fluctuate through FY2023 and the hold harmless payments per statute were reduced over a three-year period from 75 percent to 50 percent, to 25 percent. This step-down calculation gradually reduces payments to school districts as they adjust to the lower revenue due to lower enrollment which again does not provide for an accurate year-to-year comparison of per-pupil funding. An example of another statutory program that relies on ADM is the pupil transportation program. This program pays districts based on a per-student amount outlined in statute according to their brick-and-mortar ADM only. With the shift from brick-and-mortar to correspondence, most districts experienced a loss in their pupil transportation grant funding. This too has a skewing effect on the overall funding per ADM from year-to-year and should not be included in determining MOEquity.

If the Office of Elementary and Secondary Education grants Alaska the flexibility to remove hold harmless and pupil transportation from the MOEquity calculations for both fiscal years 2022 and 2023, this would result in a much more reasonable amount and could resolve this issue.

We hope this letter provides added clarity and ensures you fully understand Alaska's approach to education funding and how MOEquity applies in the state's unique circumstances. We believe the most helpful next step would be a meeting including the teams working on this at USDOE and the state. Hopefully, we can bring this to a quick resolution.

Respectfully,

A handwritten signature in black ink, appearing to read 'Deena M. Bishop', with a stylized flourish at the end.

Deena M. Bishop, Ed.D.  
Commissioner, Alaska Department of  
Education and Early Development