



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

April 11, 2024

The Honorable Löki Gale Tobin
Alaska State Legislature
State Capitol Room 11
Juneau, AK 99801

Dear Senator Tobin:

Thank you for seeking additional information from the U.S. Department of Education (Department) regarding Alaska's non-compliance with the American Rescue Plan Act's (ARP Act) maintenance of equity (MOEquity) provisions. We are pleased to provide the following answers to your questions:

I. State-Level MOEquity Requirements

State MOEquity provisions help protect local educational agencies (LEAs) serving high concentrations of students in poverty from experiencing disproportionate reductions in elementary and secondary education funding. This requires a two-part analysis (see Question 9 of the [MOEquity guidance](#)):

- Under section 2004(b)(1) of the ARP Act, for any LEA identified by the State educational agency (SEA) as a “high-need LEA,” the SEA may not, in FY 2022 or FY 2023, reduce State funding, calculated on a per-pupil basis, by an amount that exceeds the overall per-pupil reduction in State funds, if any, across all LEAs in the State for such fiscal year.
- Under section 2004(b)(2) of the ARP Act, for any LEA identified by the SEA as a “highest-poverty LEA,” the SEA may not, in FY 2022 or FY 2023, reduce State funding, calculated on a per-pupil basis, below the amount the SEA provided per pupil to such LEA in FY 2019.

MOEquity provisions were enacted for the first time in the ARP Act, which became law on March 11, 2021. Alaska assured it would “comply with the maintenance of equity provisions in section 2004(b) of the ARP and ensure its LEAs comply with the maintenance of equity provision in section 2004(c) of the ARP” upon receipt of ARP ESSER funds on March 24, 2021.¹ The Department first released [MOEquity guidance](#) to support States in implementing the provisions on June 9, 2021. The Department updated this guidance on October 1, 2021, which included the addition of question 21(a), outlining the process for submitting a small LEA tolerance proposal. The final update to the MOEquity guidance on January 23, 2023, included a clarification related to the use of Department of Treasury COVID-relief funds in a State's

¹ [ARP-ESSER-Grant-Award-Assurances_FINAL2.pdf \(ed.gov\)](#)

MOEquity analysis. None of these updates relate to the specific per-pupil analysis for determining State-level MOEquity compliance.

Question 19 of the MOEquity guidance shows that determining the overall per-pupil reduction of State funding, if any, for FYs 2022 and 2023 in the SEA as a whole is the first step in the required analysis for high-need LEAs. The State must then determine the per-pupil reduction of State funding, if any, for FY 2022 for *each high-need* LEA in the State and compare the per-pupil reduction, if any, for each high-need LEA with the overall per-pupil reduction in State funds for all LEAs. As demonstrated in Example 1 on Table 2 (page 12 of the [MOEquity guidance](#)), if a State has a \$0 reduction in overall per-pupil funds, then any per-pupil reduction in a specific high-need LEA that exceeds \$0 constitutes non-compliance. Merely having a \$0 reduction in overall per-pupil funds in the State does not demonstrate compliance with MOEquity requirements for specific high-need LEAs.

In its most recent communication with the Department (April 5, 2024), Alaska DEED states that “Alaska’s funding during fiscal years 2019-2023 was entirely consistent with congressional intent. It did not reduce per-pupil spending on education.” However, Alaska DEED’s most recent data [submission](#) (final FY 2022 and FY 2023 data), available on the Department’s [MOEquity webpage](#), Column AD, Row 60, indicates a \$205 per-pupil reduction in overall State funding from FY 2021 to FY 2022. Column AF, Row 60, indicates a \$27 per-pupil reduction in overall State funding from FY 2022 to FY 2023. While this reduction in per-pupil funding statewide does not, by itself, constitute non-compliance with MOEquity requirements, it does indicate a State-level reduction in per-pupil spending between FYs 2021-2023.

Small LEA Tolerance

The Department acknowledges the possibility of volatility in the calculated per-pupil funding amounts for very small LEAs caused by small year over year changes in student enrollment, which may be unrelated to whether an SEA has achieved the intent of the requirements. Therefore, a State may choose to submit a proposal to tolerate a specific year over year fluctuation in State funding for such small LEAs. Please review FAQ 21(a) for the Department’s considerations when reviewing these proposals.

A complete list of States with approved small LEA tolerance proposals and the dates of approvals are available on the Department’s [MOEquity webpage](#). The Department set a deadline of March 15, 2023, for States to submit FY 2022 small LEA tolerance proposals and March 15, 2024, for FY 2023 proposals. Alaska DEED submitted proposals on September 26, 2023, February 23, 2024, and March 11, 2024.

II. Alaska DEED’s MOEquity Calculations

On December 21, 2022, the Department communicated to Alaska DEED that all three funding sources – State aid, required local effort,² and a portion of eligible Federal Impact Aid – used to

² See [FAQ 17](#).

meet a school district's calculated basic need could be included in the State-level MOEquity data. The Department also communicated to Alaska DEED that any supplemental payments from DEED to LEAs to resolve non-compliance with MOEquity requirements in a prior fiscal year may be excluded from the State's disparity test analysis under section 7009 of the ESEA. However, Alaska's equalization of expenditures among LEAs under section 7009 of the Elementary and Secondary Education Act of 1965 (ESEA) does not constitute compliance with the ARP Act's MOEquity requirements.

As noted above, Alaska DEED submitted three separate small LEA tolerance proposals (see Appendix A). Alaska DEED's submissions ultimately reduced the scope of non-compliance for LEAs that met the enrollment levels and per-pupil reductions that Alaska asked the Department to tolerate. In Alaska's most recent [FY 2022 data submission](#), the State identified 34 LEAs as high-need and 32 as highest-poverty. In FY 2022, Alaska did not maintain State funding equity in 17 of these LEAs; however, 15 were covered by Alaska's small LEA tolerance proposal. In the most recent FY 2023 data [submission](#) Alaska DEED identified 40 LEAs as high-need and 33 as highest-poverty. In FY 2023, Alaska did not maintain State funding equity in 24 LEAs; however, 20 were covered by Alaska's small LEA tolerance proposal.³

The State's grant condition placed on March 27, 2024, will remain until Alaska demonstrates that it has resolved its non-compliance with the MOEquity requirements in section 2004(b) of the ARP Act. The Department strongly encourages Alaska to resolve its non-compliance issues, especially for FY 2022, as quickly as possible. The Department will remove the high-risk designation from Alaska's ARP ESSER grant award if by April 25, 2024, Alaska confirms that an appropriations request has been made, or otherwise presents a sufficient plan to resolve its non-compliance.

III. Scope of Non-Compliance

The data [submission](#) used to determine State-level MOEquity compliance was compiled and calculated by Alaska DEED. It is publicly available on the Department's [MOEquity webpage](#). Only LEAs designated by Alaska DEED as high-need or highest-poverty are subject to the maintenance of equity requirement.

Alaska may resolve the identified non-compliance for FYs 2022 and 2023 by making supplemental payments to high-need and highest-poverty LEAs equal to the amount of the State funding reductions considered "disproportionate" under the MOEquity requirements. To calculate these amounts, the State must first determine the overall, statewide per-pupil reduction in State funding. Based on data provided by Alaska DEED, this reduction is \$205 per-pupil in FY 2022⁴ and \$27 per-pupil in FY 2023.⁵ Then, the State must compare the per-pupil reduction, if any, for each high-need LEA with the overall per-pupil reduction in State funds for all LEAs. The total MOEquity shortfall would be determined by multiplying the disproportionate reduction in per-pupil funds by the number of students served by the LEA in the corresponding fiscal year.

³ https://oese.ed.gov/files/2024/03/FINAL_Alaska-Amended-Small-LEA-Tolerance-Response_3.18.24-1.pdf

⁴ See Column AD, Row 60, Alaska DEED State-level MOEquity data [submission](#).

⁵ See Column AF, Row 60, Alaska DEED State-level MOEquity data [submission](#).

If a highest-poverty LEA has disproportionate per-pupil reductions in both fiscal tests, the State need only provide supplemental funding for the greater of the two reductions. For example, Kenai Peninsula Borough School District had the following per-pupil reductions in FY 2022, according to data provided by Alaska DEED:

LEA	Total FY 2022 ADM	FY 2019 State funding per-pupil	FY 2021 State funding per- pupil	FY 2022 State funding per- pupil	FY 2022 Statewide per-pupil funding reduction	FY 2022 High Need Analysis = (FY 2022 – FY 2021) + \$205	FY 2022 Highest Poverty Analysis = (FY 2022 – FY 2019)
Kenai Peninsula Borough School District	8,298	\$10,080	\$10,678	\$9,812	(\$205)	(\$661)	(\$268)

The LEAs not addressed by Alaska DEED’s small LEA tolerance proposal, and that exhibit non-compliance are as follows:

Table 1. Amount of State funding reductions considered disproportionate under FY 2022 maintenance of equity requirement	
<i>LEA</i>	<i>Shortfall</i>
Kenai Peninsula Borough School District	\$5,485,666
Anchorage School District	\$6,407,820

Table 2. Amount of State funding reductions considered disproportionate under FY 2023 maintenance of equity requirement	
<i>LEA</i>	<i>Shortfall</i>
Juneau Borough School District	\$90,148
Anchorage School District	\$215,187
Kenai Peninsula Borough School District	\$2,494,871
Fairbanks North Star Borough School District	\$2,756,426

MOEquity shortfall figures have been adjusted to account for the statewide per-pupil reductions in FYs 2022 and 2023 reflected in Alaska DEED’s most recent data submission.

IV. Compliance Resolution Pathways

Fifty States have demonstrated compliance with FY 2022 State-level MOEquity requirements in one or more of the following ways: (1) submitting data assuring that highest-poverty and high-need LEAs did not experience disproportionate reductions in State per-pupil funding, (2) receiving Department approval of a small LEA tolerance proposal, and (3) making supplemental payments to impacted LEAs to mitigate a FY 2022 and/or FY 2023 shortfall. (States also achieved compliance through a combination of small LEA tolerance and

supplemental payments.) To address a State-level MOEquity compliance issue in FY 2022 or FY 2023, the SEA must be able to demonstrate that additional funds have been directed to the high-need and/or highest-poverty LEAs that received disproportionate per-pupil reductions to ensure that the SEA meets the MOEquity requirements for this subset of LEAs, compared to other LEAs in the State. With fiscal year 2023 closed, this supplemental funding may be provided in a subsequent fiscal year. An addition of one-time education funding to the approved FY 2025 budget, distributed through Alaska's Foundation Formula, would be one way for Alaska DEED to demonstrate compliance. However, providing additional funding to *all* LEAs in a future fiscal year would not resolve the MOEquity compliance issues for specific high-need or highest-poverty LEAs.

As explained in our March 27, 2024, letter, the Department has designated Alaska DEED a high-risk grantee for its ARP ESSER grant. The Department may consider this designation as part of our standard risk review process before awarding future discretionary grants to Alaska DEED. Additionally, the Department may consider the high-risk designation for this grant if Alaska DEED requests an extension of the liquidation period, also known as late liquidation, for its ARP ESSER grant. While the high-risk designation is currently limited to Alaska's ARP ESSER grant, the Department may consider expanding the designation to cover all grants administered by Alaska DEED. Finally, the Department may initiate other enforcement actions under sections 452 and 455 of the General Education Provisions Act (GEPA) which include (1) withholding a portion of the State's ARP ESSER funds that have not been drawn down from the Department's financial system, or (2) recovery of funds from the State. Both withholding and recovery of funds, as well as any other GEPA-related enforcement actions, require the provision of due process rights including appeal of any final decision to the Office of Hearings and Appeals.

If you have additional questions, please contact the Office of State and Grantee Relations through the Alaska State mailbox at Alaska.OESE@ed.gov.

Sincerely,



Adam Schott
Principal Deputy Assistant Secretary
Delegated the Authority to Perform the
Functions and Duties of the Assistant Secretary
Office of Elementary and Secondary Education

Appendix A. Communication between the Department and Alaska DEED

Alaska DEED first reached out for technical assistance regarding State-level MOEquity requirements on June 14, 2021. Alaska provided baseline and interim State-level data on August 31, 2021. On July 5, 2022, the Department notified Alaska that its interim FY 2022 data indicated that Alaska was not maintaining equity in one or more high-need or highest-poverty LEAs. On August 1, 2022, the Department requested a meeting with Alaska to discuss the FY 2022 compliance issues noted in the July 5, 2022, correspondence and provide technical assistance. Alaska did not agree to meet with the Department to discuss these interim FY 2022 compliance issues until October 11, 2022.

Timeline of Alaska DEED submissions of small LEA tolerance proposals and corresponding maintenance of equity data:

- March 15, 2023 – FY 2022 small LEA tolerance proposal deadline.
- May 5, 2023 – Alaska submits first small LEA tolerance proposal draft.
- July 31, 2023 – Deadline to submit final FY 2023 State-level MOEquity data.
- August 4, 2023 – Alaska submits MOEquity data for FY 2022 and 2023 with hold harmless funding removed but provides no explanation justifying the removal.
- September 26, 2023 – Alaska submits final version of first small LEA tolerance proposal.
- October 4, 2023 – The Department approves Alaska’s first small LEA tolerance proposal, tiers 1-3.
- October 26, 2023 – Alaska provides explanation for why it believed hold harmless funding should be excluded from State data.
- November 3, 2023 – The Department notifies Alaska that excluding hold harmless data is inconsistent with MOEquity guidance and requests updated data.
- December 22, 2023 – The Department sends Alaska DEED a monitoring letter, requesting outstanding MOEquity data and a compliance plan by January 22, 2024. The non-compliant LEAs listed in this monitoring letter reflect the 8/4/23 data submission that is inconsistent with Department guidance because the State has failed to provide updated data.
- February 23, 2024 – Alaska submits FY 2022 and 2023 MOEquity data with hold harmless re-added and a second small LEA tolerance proposal to reflect the updated MOEquity data.
- March 8, 2024 – Alaska submits final MOEquity data (FYs 2022 and 2023) that includes hold harmless funding, CRF funding that went to 19 LEAs for COVID testing and uses ADM from the prior year to determine enrollment. (Original FY 2022 data used FY 2020 ADM, now uses FY 2021.) All updates are consistent with Department guidance.
- March 12, 2024 – Alaska submits third small LEA tolerance proposal to reflect data revisions made on 3/8/24.
- March 18, 2024 – The Department approves Alaska’s third small LEA tolerance proposal for FYs 2022 and 2023. All tiers are considered reasonable.
- March 22, 2024 – Alaska sends a letter outlining issues with the MOEquity provision and outlines a process for how the State could come into compliance but makes no commitment to do so.

- March 27, 2024 – The Department sends a letter to Alaska notifying them that their ARP ESSER award is on high-risk status and has a grant condition due to their ongoing non-compliance with FY 2022 *and* lack of a sufficient compliance plan. The letter explains that the high-risk status will be removed when a sufficient compliance plan is provided, and the grant condition will be removed when the State has demonstrated compliance for the two outstanding LEAs in FY 2022. FY 2023 compliance issues are also outlined for clarity, per Alaska’s request.
- April 5, 2024 – Alaska DEED sends a response to the March 27 letter requesting the Department reconsider the removal of hold harmless funding and transportation funding from the State’s MOEquity data.

This timeline does not include multiple technical assistance calls and emails between Alaska DEED and the Department dating back to June 14, 2021.