



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

October 18, 2024

The Honorable Deena M. Bishop  
Commissioner of Education  
Alaska Department of Education and Early Development  
P.O. Box 110500  
Juneau, AK 99811

Dear Commissioner Bishop:

The U.S. Department of Education (Department) notified the Alaska Department of Education and Early Development (AK DEED) by letter on September 13, 2024, (withholding notice) that we intended to suspend AK DEED's authority to obligate \$5,556,632 of Federal funds awarded to Alaska under the American Rescue Plan Act of 2021 (ARP Act) Elementary and Secondary School Emergency Relief (ESSER) grant program, pending the outcome of withholding proceedings on Alaska's non-compliance with the ARP Act's maintenance of equity requirements (§ 2004(b)) for fiscal year 2023. In our many communications with State officials, we have reiterated the intent to suspend AK DEED's authority to obligate these funds and encouraged the State to come into compliance with the ARP Act's requirements.

The Department is authorized to suspend AK DEED's authority to obligate funds, including authority to draw down those funds to liquidate obligations, under section 455 of the General Education Provisions Act (GEPA) (20 U.S.C. § 1234d(d)) after providing AK DEED "reasonable notice and an opportunity to show cause why ... authority to obligate Federal funds should not be suspended." Under this provision, AK DEED had an opportunity to explain why the Department should not suspend AK DEED's authority to obligate the funds at issue pending the outcome of the withholding proceedings, which it did in its show cause letter of September 30, 2024.

Suspension is a temporary, time-limited administrative measure that is used to ensure the Federal funds subject to a withholding proceeding are protected pending the outcome of the withholding hearing. Without such a suspension, AK DEED could obligate and draw down the funds that are the subject of the withholding hearing before those proceedings are completed—an outcome that would make the withholding proceeding meaningless. Based on the clear meaning of the statutory suspension authority (GEPA § 455(d), 20 U.S.C. § 1234d(d)), a decision to suspend access to funds pending the outcome of a timely withholding hearing is made by the Assistant Secretary, pursuant to his delegated authority, and is not subject to review by the Office of Administrative Law Judges (OALJ). I note that on October 15, 2024, the Department received AK DEED's request for a hearing on the proposed withholding of these funds. Many of the issues raised in AK DEED's show cause letter are the same issues that are the subject of the withholding hearing requested and are properly addressed in that forum.

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<http://www.ed.gov/>

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

After considering the applicable arguments made in your show cause letter, I have determined that AK DEED did not sufficiently show cause as to why its authority to obligate funds should not be suspended pending the outcome of a hearing on the withholding determination. This conclusion is based on the need to ensure that the funds at issue are not drawn down and liquidated as part of the obligation process during the withholding proceedings on this matter, and the fact that Alaska local educational agencies (LEAs) would suffer irreparable harm if the maintenance of equity requirements were not met, and a suspension was not imposed. Alaska did not indicate any plan to ensure funds for the impacted LEAs are protected if it does not prevail in the withholding hearing or other actions it proposes to remedy its noncompliance with the maintenance of equity requirements (e.g., mediation or entering into an agreement).

For these reasons, I am suspending AK DEED’s authority to obligate and draw down the \$5,556,632 associated with the amount of funds necessary to resolve this matter, pending the outcome of the administrative hearing regarding the withholding of these funds.

AK DEED’s ARP ESSER grant remains on route payment status and the Department will carefully review any requests to draw down funds to liquidate LEA obligations. Should AK DEED or Alaska LEAs have obligated ARP ESSER funds that cannot be liquidated due to this withholding action, AK DEED assumes responsibility for payment of these costs using State funds. Note that the deadline to obligate ARP ESSER funds was September 30, 2024.

As described in the withholding notice, AK DEED may come into compliance with the maintenance of equity requirement for fiscal year (FY) 2023 by making the required supplemental payments (\$5,556,632 for FY 2023) to the affected LEAs now, or by entering into a formal written agreement with the Department that details how the State will remedy the funding reductions of State funds to LEAs that resulted in the non-compliance in FY 2023. To be clear, a memorandum of agreement committing Alaska to issue the required supplemental payments at a later date in 2024 would be an acceptable formal written agreement. Any such agreement would help ensure that ARP ESSER funds continue to benefit Alaska’s students and schools while the State works to meet its legal obligations. My staff and I remain available to discuss an agreement detailing a credible means of remedying the State funding reductions that affected LEAs in both FYs 2022 and 2023.

If you need any assistance or have any questions regarding this matter, please do not hesitate to contact me.

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

Cc: The Honorable Mike Dunleavy, Governor