



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

September 12, 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 July 30, 2024, (withholding notice) that we intended to suspend AK DEED's authority to obligate \$11,893,486 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 (FY) 2022. In a letter dated August 22, 2024, we 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 the 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.

The purpose of the suspension authority is to protect the funds that are the object of the withholding proceedings. Without such a suspension, AK DEED has the ability to obligate and draw down the funds to liquidate those obligations during an appeal portion of the process. This could result in the funds that are the object of the withholding being drawn down and liquidated before those proceedings are completed—an outcome that would make the withholding process meaningless. The opportunity to show cause is reviewed by the program official who made the withholding determination.

After considering the arguments outlined in Alaska's August 14, 2024, 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 pendency of the withholding proceedings,

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

and the fact that Alaska's local educational agencies (LEAs) would suffer irreparable harm if the maintenance of equity requirements were not met, and a suspension was not imposed.

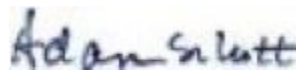
As a result, I am suspending AK DEED's authority to obligate and draw down the \$11,893,486 associated with the amount of funds necessary to resolve this matter pending the outcome of the administrative hearing regarding the withholding of these funds.

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 make obligations of ARP ESSER funds that cannot be liquidated due to this withholding action, AK DEED assumes responsibility for payment of these costs using State funds. The deadline to obligate ARP funds is September 30, 2024.

As described in the July 30, 2024, notice of intent to withhold funds, and subsequent correspondence, the State may address its non-compliance with the maintenance of equity requirements for FY 2022 by making the required supplemental payments (\$11,893,486 for FY 2022) 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 to LEAs that caused the noncompliance in FY 2022. To be clear, a memorandum of agreement committing Alaska to issuing 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 FY 2022, as well as the additional LEAs that were impacted by State funding reductions in FY 2023.

If you need additional assistance or have questions regarding this communication, 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