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U.S. POSTAL SERVICE

Faatimah Muhammad, Director
Impact Aid Program
U.S. Department of Education
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**RE: Request for a Hearing Pursuant to Sections 7009 and 7011(a) of the
Elementary and Secondary Education Act of 1965 (20 U.S.C. § 7709, 7711(a))
Regarding Alaska's FY2026 Equalization Determination**

Dear Director Muhammad:

The Alaska Department of Education and Early Development ("Alaska" or "the State") received the U.S. Department of Education ("Department") Report for the Year July 1, 2025 – June 30, 2026 (State Fiscal Year 2026) under Section 7009(b) of the Elementary and Secondary Education Act of 1965 ("Determination") on May 16, 2025.

Alaska hereby appeals the Determination of the Department pursuant to 20 U.S.C. §§ 7009(c)(4)(B) and 7011(a). *Codified at* 34 C.F.R. § 222.165(a)(3). Specifically, Alaska disputes the certification denial under Section 7009 for fiscal year (FY) 2026. This denial prevents Alaska from taking into consideration Impact Aid payments when calculating state aid to districts for FY2026. A copy of the Determination is attached.

I. This Appeal is Timely Submitted Pursuant to 34 C.F.R. § 222.165(a)(1).

Determination appeals submitted by State Education Agencies ("SEAs") must be received in writing "within 60 days of receipt of the determination." 34 C.F.R. § 222.165(a)(1). Alaska received its initial Determination refusing certification on May 16, 2025. This appeal is submitted by U.S. Mail and e-mail, in accordance with the Determination's letter of instruction, on July 14, 2025, which is within 60 days of the receipt date. The Department of Education and Early Development (the SEA) is furnishing a copy of this request to all Local Education Agencies ("LEAs") in the State in accordance with 34 C.F.R. § 222.165(a)(3).

II. Factual Background

Alaska submitted its disparity submission of state fiscal year 2024 data used for fiscal year 2026 certification of its state aid program as equalizing expenditures on March 3, 2025. With that submission, Alaska provided formal notice of its intent to consider a portion of Impact Aid payments when allocating state aid to schools for the period of July 1, 2025, to June 30, 2026, as permitted by Section 7009(c)(1) of the Elementary and Secondary Education Act (“ESEA”).

The Department requested descriptions for several items over the following weeks and confirmed receipt of all necessary material on May 2, 2025. The Department also notified LEAs of their right to a hearing in accordance with ESEA Section 7009(c)(2) on March 25, 2025. No LEAs requested a hearing. On May 16, 2025, the Department issued its Determination.

In its Determination, the Department found the State’s disparity to be 26.88%, which is greater than the 25% disparity permitted by statute, and denied Alaska’s certification for FY2026. The Department’s decision largely rests on its analysis of Alaska’s consideration of LEA transfers between funds and the related finding that such transfers do not meet the definition of a special cost differential. Alaska disputes this finding and the underlying rationale.

III. Statement of Disputed Issues of Fact and Law

A. The Department Erred in Fact and Law When Finding That the State Did Not Meet the Disparity Test as Presented for Certification.

The Department questioned Alaska’s consideration and treatment of LEA transfers between funds in its FY2026 disparity submission; however, the State’s interpretation aligns with established federal direction and national accounting standards. Consistent with longstanding guidance, Alaska adjusted revenues relating to specific funds. Accordingly, Alaska disputes the Department’s finding.

Alaska also disputes the Department’s finding that amounts transferred between funds do not meet the definition of a special cost differential. Specific funds such as food service and pupil transportation, for example, are earmarked for specific services and cannot be used to support general classroom instruction. When amounts are added to such funds, including through transfers, those revenues are restricted to supporting specific costs that easily meet the definition of special cost differentials. For example, Alaska adjusted revenues relating to funds LEAs transferred into a specific fund for transportation, which qualify as special cost differentials given the unique transportation costs (*e.g.*, daily airplane rides) arising from the geographic isolation of Alaska’s districts. Consistent with longstanding guidance, Alaska recognized those revenues as associated with special cost differentials and excluded them from total revenues.

B. Even if the Department's Underlying Findings Are Upheld, Alaska Must be Certified if Deemed to Meet the Disparity Test Under an Alternate Method.

Alaska met the disparity test and should be certified for FY2026 based on its original submission since, as detailed above, the Department erred in its initial determination. However, if the tribunal upholds the Department’s determination (dated May 16, 2025), the State should be permitted the opportunity to resubmit its request. The Impact Aid regulations at 34 C.F.R. § 222.162(d) provide four ways the State may account for special cost differentials when determining the disparity percentage. Accounting for special cost differentials under alternate methods would likely lead to

the State meeting the disparity standard. Failure to certify the State as equalized when it meets the disparity standard using an alternative method would be contrary to the program's purpose and harm the federal interest.

Alaska notes that the method used in its FY2026 disparity submission was selected, at least in part, to comply with a legal position the Department took in its initial FY2022 certification determination report for Alaska, with which Alaska disagrees. Specifically, Alaska disagrees with the Department's position that the State must include transportation-related revenues and expenses in the disparity test under 34 C.F.R. § 222.162. Alaska's pupil transportation funding system is not a part of Alaska's program of state aid for free public education and was recognized as such by the Department in previous years. Accordingly, pupil transportation revenues and expenditures should not qualify as revenue for current expenditures. Alaska put forth its position on this issue in its request for a hearing of that determination in 2021, has continuously preserved this position, and again restates that position and disputed issue of law herein.

C. The Department is Estopped from Refusing Certification for the Proffered Reasons.

Based on the Department's prior conduct in working with Alaska regarding its disparity submissions, the Department is estopped from denying Alaska's certification based on Alaska's inclusion of pupil transportation funds or recognition of transfer adjustments.

D. Failure to Certify Alaska for FY2026 Would Harm the Federal Interest

Alaska met the disparity test and should be certified for FY2026; failure to do so would result in harm to the federal interest. Even if the specific findings at issue in the Determination are upheld, to the extent Alaska can demonstrate it meets the disparity standard under any allowable methodology, Alaska should be certified and permitted to consider Impact Aid payments in disbursing its state aid to districts for FY2026. Failure to do so would be contrary to the program's purpose and harm the federal interest.

Moreover, the Department's current position would require Alaska to upend its state aid program for public education and have the unintended result of forcing the State to issue state aid for free public education in a manner that significantly dis-equalizes education funding. Consequently, maintaining the Department's determination would create an identifiable harm, rather than resolve one. If the Department's determination is not reversed, Alaska would lose \$80 million dollars that would otherwise be available for public school funding in the state. Given Alaska's equalized state aid system, this would impact districts inequitably. Such a result is inconsistent with the legislative intent and federal purpose to provide a statutory exception to states that equalize their school finance formula across all school districts in the state and permit such states to account for Impact Aid within that formula. *See generally Tangipahoa Par. Sch. Bd. v. U.S. Dep't of Educ.*, 821 F.2d 1022, 1030 (5th Cir. 1987) (applying equitable factors to the Department's enforcement actions and questioning the appropriateness of enforcement when legislative intent was met). The Determination is contrary to the purpose of the ESEA and thus in error.

In addition to its inconsistency with the legislative intent of Impact Aid to provide a statutory exception in states that equalize their school finance formulas across all school districts, the Determination is also inconsistent with the Department's stated policy priority of returning

education to the states. *See* Proposed Priorities and Definitions, 90 Fed. Reg. 21,710, 21,712 (proposed May 21, 2025). Alaska designed and operates its program of state aid for free public education as an equalized system within this framework. Determining Alaska meets the disparity test does not impact the Department's Impact Aid allocation to Alaska school districts; rather, the impact affects only the State's funding and allocations, allowing the State to operate its own State aid program for free public education as designed. Federal decertification, on the other hand, would upend Alaska's State aid program for public education, resulting in unintended inequity for Alaska school districts, and could force Alaska to cut essential services or redirect instructional funds—undermining the very students Impact Aid is meant to support, especially in rural and Alaska Native communities.

II. Conclusion

Alaska respectfully requests a hearing before the Office of Hearings and Appeals pursuant to Section 7009(c)(4)(B) and 7011(a) of the ESEA and 34 C.F.R. § 222.165. The State further requests that the assigned Administrative Law Judge permit an oral briefing to assist with the resolution of disputed material facts. *Id.* at § 222.165(g)(2). Alaska does not waive its right to seek other resolutions for this matter.

Respectfully submitted,

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