



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

April 15, 2021

Honorable Ryan Stewart
Secretary of Education
New Mexico Public Education Department
300 Don Gaspar Avenue
Santa Fe, New Mexico 87501-2786

Dear Secretary Stewart:

Enclosed is a new determination for State fiscal year (FY) 2021 for the State of New Mexico under section 7009(b) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). For the reasons set forth in the report, the certification and report issued on December 7, 2020 are hereby revoked. New Mexico is therefore not eligible to consider Impact Aid payments to local educational agencies as local resources in determining State aid entitlements for the period July 1, 2020 through June 30, 2021 (State FY 2021).

A copy of this letter and report is being sent to all superintendents in New Mexico to inform them of their right to a hearing. The State or any local educational agency adversely affected by this determination may request, in writing and within 60 days of the receipt of this notice, a hearing under ESEA §§ 7009 and 7011(a) and 34 C.F.R. § 222.165. If the State or any local educational agency wishes to request a hearing, it must send a hearing request that specifies the issues of fact and law to be considered to Faatimah.Muhammad@ed.gov.

Sincerely,

Faatimah Muhammad
Director
Impact Aid Program

Enclosures
cc: New Mexico Superintendents

www.ed.gov

400 MARYLAND AVE., SW, WASHINGTON, DC 20202

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

FOR THE STATE OF NEW MEXICO:

REPORT FOR THE YEAR JULY 1, 2020 - JUNE 30, 2021 (STATE FISCAL YEAR 2021) UNDER SECTION 7009(b) OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, AS AMENDED (20 U.S.C. § 7709(b))

Section I. Background

A. Legal Framework

Under section 7009 of the Elementary and Secondary Education Act of 1965, as amended (“ESEA” or “the Impact Aid law”), a State is permitted to include Impact Aid funds as local effort in its payment formula for a particular fiscal year if the Secretary certifies that the State has in effect a program of State aid that equalizes expenditures for free public education among local educational agencies in the State.

To receive certification from the Secretary as equalized under section 7009, a State must initiate a review of its State aid program by “submit[ting] to the Secretary, not later than 120 days before the beginning of the State’s fiscal year, a written notice of the State’s intention to do so.” ESEA § 7009(c)(1)(A). This notice must “be in the form that the Secretary requires, including evidence that the State has notified each local educational agency (LEA) in the State of such State’s intention to consider such payments in providing state aid.” ESEA § 7009(c)(1)(B).

The “form [of the notice] that the Secretary requires,” ESEA § 7009(c)(1)(A), is established in the Impact Aid regulations in 34 C.F.R. § 222.164. That section of the regulations lists several requirements, including that “[w]henever a proceeding under this subpart is initiated, the party initiating the proceeding shall provide either the State or all LEAs with a complete copy of the submission required in [34 C.F.R. § 222.164(b)].” 34 C.F.R. § 222.164(a)(2). In section 222.164(b), the regulation further requires that the State’s submission “[d]emonstrate how its State aid program” and “the proportion of those [Impact Aid] funds that will be taken into consideration comport with” the disparity test requirements established at 34 C.F.R. § 222.162. 34 C.F.R. § 222.164(b)(2)(i). This submission “must be received by the Secretary no later than 120 calendar days before the beginning of the State’s fiscal year. . . .” 34 C.F.R. § 222.164.(b)(2)(B)(ii).

B. Procedural History

The State submitted a letter to the Impact Aid Program (IAP) on February 13, 2020, notifying the IAP of the State’s intent to take credit for a portion of the Impact Aid payments made to LEAs during State fiscal year (FY) 2021. See Attachment. The State also included a copy of a memorandum sent on the same date to all superintendents in the State, notifying them of the State’s intent. On March 6, 2020, the State submitted revenue data and additional descriptive information to show whether the State met the disparity test for FY 2021 under 34 C.F.R. § 222.162.

Upon receiving the State’s disparity test submission on March 6, 2020, IAP began its standard procedures that follow a State’s request for certification. Specifically, IAP: notified LEAs of their right to request a predetermination hearing; requested from the state additional clarifying information and data needed for IAP to conduct its analysis; scheduled and held a predetermination hearing; analyzed all data and information received; and issued a determination. The December 7, 2020 determination found that New Mexico met the disparity test for FY 2021.

On January 15, 2021, an Administrative Law Judge (ALJ) issued an Initial Decision in a hearing regarding a different proceeding – IAP’s FY 2020 determination for New Mexico under section 7009 – in which the ALJ stated in a footnote that the State’s March 6 submission for FY 2021 was made three days after the deadline. (In the Matter of New Mexico Public Education Department, Docket No. 20-16-I, Impact Aid Proceeding, Initial Decision, n. 2, p. 3).

On February 4, 2021, IAP received two requests for a hearing regarding the FY 2021 determination. These requests were timely filed under 34 C.F.R. § 222.165(a).¹ The hearing requests raised a number of issues, including the argument that the State’s data submission was late. After a thorough review of the administrative record, IAP concluded that while the State submitted its intent to take payments into account before the deadline, it did not submit the required accompanying data until three days after the deadline. IAP made an inadvertent error in proceeding to consider the State’s disparity test data that was in fact submitted late. IAP’s determination regarding FY 2021, issued December 7, 2020, is revoked for the reasons set forth below. Therefore, IAP has not requested an ALJ regarding the December 7 determination. The State or any LEA that is adversely affected by this new determination is entitled to request a hearing by following the procedures established in 34 C.F.R. § 222.165(a).

Section II. Analysis

A. The State’s Required Submissions Were Late

New Mexico’s State FY 2021 began on July 1, 2020. One hundred twenty days before the beginning of State FY 2021 was March 3, 2020.

The document submitted on February 13, 2020, was incomplete and ineffective because it did not include the disparity test data required under the regulations. 34 C.F.R. § 222.164(b)(2)(i).

Under the regulations, disparity test data is a required component of the notice submitted by the State. The State’s data submission made on March 6 was not timely because it was three days past the deadline.

¹ Under 34 C.F.R. § 222.165(a), “[a] State or LEA that is adversely affected by a determination” and wishes to request an administrative hearing “must submit a written request for a hearing within 60 days of receipt of the determination.” As the determination on FY 2021 was issued and transmitted by email to LEAs on December 7, 2020, the deadline for LEAs to submit written hearing requests was February 5, 2021.

B. The State Cannot be Certified as Equalized Under § 7009 for FY 2021

The Impact Aid law contains a general prohibition in section 7009(a) under which States may not take into consideration Impact Aid funds paid to LEAs except under the very specific circumstances described in section 7009(b). To receive permission from the Department for this exception to the general prohibition, a State must follow the procedures in the Impact Aid law and regulations, including the requirement for the State to initiate a review by submitting certain specified information by a prescribed deadline. In this case, the State did not submit the required information by the mandatory deadline.

IAP's authority to consider whether a State's program of State aid meets the requirements of section 7009 is created – and limited – by the Impact Aid law and regulations. The Secretary does not have the authority to grant exceptions to the mandatory 120-day deadline established by ESEA § 7009 and 222.164(b)(2)(ii). There is no waiver authority applicable to the Impact Aid law or regulations.² IAP did not have the authority to review New Mexico's FY 2021 late submission for certification under § 7009; therefore IAP erred by issuing the December 7, 2020 determination for the 2021 fiscal year.

Section III. Findings

Based on the facts and analysis described above, the certification and report issued on December 7, 2020 are hereby revoked. New Mexico is therefore not eligible to consider Impact Aid payments to local educational agencies as local resources in determining State aid entitlements for the period July 1, 2020 through June 30, 2021 (State FY 2021).

² For example, the general ESEA waiver authority in section 8401 does not apply to the Impact Aid Program. See ESEA § 8102.



STATE OF NEW MEXICO
PUBLIC EDUCATION DEPARTMENT
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RYAN STEWART, Ed.L.D.
SECRETARY DESIGNATE OF EDUCATION

MICHELLE LUJAN GRISHAM
GOVERNOR

February 13, 2020

Marilyn Hall, Director
Office of Impact Aid Programs
U.S. Department of Education
400 Maryland Avenue SW
Washington D.C. 20202-6244

Dear Director Hall:

As required by Title 20, Chapter 70, Subchapter VII, U.S. Code Section 7709, this letter shall serve as written notification that the State of New Mexico intends to consider 75 percent of eligible local sources of revenue and any eligible Impact Aid funds during the 2020-2021 school year. The attached copy of a memorandum sent to the New Mexico school districts shall serve as evidence that we have notified each local education agency of our intent, as required by Section 7709.

In addition, in conformance with long-standing practice, we will not request a local contribution rate for state fiscal year 2020-2021 for New Mexico applicants under Section 7703. We have opted to request the minimum rate of payment guaranteed by statute, one-half of the average per-pupil expenditure of all states.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Craig".

David Craig, Director
School Budget and Finance Analysis Bureau

/DC

Enc: (Impact Aid Credit Memo to School District Superintendents)

cc: Amelia "Molly" Chavez, Director of Operations
Anthony Duran, School Budget and Finance Analysis Bureau, PED
Adan Delgado, Acting Deputy Secretary of Finance and Operations



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RYAN STEWART, Ed.L.D.
SECRETARY DESIGNATE OF EDUCATION

MICHELLE LUJAN GRISHAM
GOVERNOR

February 13, 2020

MEMORANDUM

TO: School District Superintendents
State-Chartered Charter School Head Administrators

FROM: David Craig, Director *DC*
School Budget and Finance Analysis Bureau

RE: **Impact Aid Credit**

Pursuant to the requirements of Title 20, Chapter 70, Subchapter VII, U.S. Code Section 7709, this memorandum shall serve as written notification to your local education agency that the State of New Mexico intends to take 75 percent credit of eligible local sources of revenue and any eligible Impact Aid funds during the 2020-2021 school year.

If you have any questions regarding this notification, please feel free to contact David Craig at (505) 827-6537.

\DC

cc: Marilyn Hall, U.S. Department of Education, Office of Impact Aid Programs
Office of the General Counsel, PED
Adan Delgado, Deputy Secretary of Finance and Operations, PED
Anthony Duran, School Budget and Finance Analysis Bureau, PED