

**ALASKA STATE LEGISLATURE  
SENATE EDUCATION STANDING COMMITTEE**

April 3, 2024

3:30 p.m.

**MEMBERS PRESENT**

Senator Löki Tobin, Chair  
Senator Gary Stevens, Vice Chair  
Senator Jesse Bjorkman  
Senator Jesse Kiehl  
Senator Elvi Gray-Jackson

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Representative Rebecca Himschoot  
Representative Andi Story

**COMMITTEE CALENDAR**

PRESENTATION: SUMMARY OF THE IMPLEMENTATION OF THE FEDERAL  
"MAINTENANCE OF EQUITY" PROVISION

- HEARD

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

AUSTIN REID, Federal Affairs Advisor  
National Conference of State Legislatures  
Washington, D.C.

**POSITION STATEMENT:** Provided the presentation Summary of the  
Implementation of the Federal "Maintenance of Equity" Provision.

CONOR BELL, Fiscal Analyst  
Legislative Finance  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions on Maintenance of Equity.

## **ACTION NARRATIVE**

[3:30:42 PM](#)

**CHAIR LÖKI TOBIN** called the Senate Education Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Kiehl, Gray-Jackson, Stevens, and Chair Tobin. Senator Bjorkman arrived shortly thereafter.

[3:31:56 PM](#)

CHAIR TOBIN announced Senator Bjorkman arrived.

### **PRESENTATION: SUMMARY OF THE IMPLEMENTATION OF THE FEDERAL "MAINTENANCE OF EQUITY" PROVISION**

[3:32:01 PM](#)

CHAIR TOBIN announced the consideration of the implementation provision in federal law called "Maintenance of Equity." She stated Alaska is currently out of compliance with Maintenance of Equity and has been sanctioned by the U.S. Department of Education.

[3:33:35 PM](#)

AUSTIN REID, Federal Affairs Advisor, National Conference of State Legislatures, Washington, D.C., provided the following testimony with his Summary of the Implementation of the Federal "Maintenance of Equity" Provision presentation:

[Original punctuation provided.]

Thank you for the invitation to testify before the committee today. My name is Austin Reid and I am a Federal Affairs Advisor at the National Conference of State Legislatures (NSCL). NCSL is a nonpartisan organization working in a bipartisan manner to serve and strengthen the legislatures in all the state and territories.

In this role, I serve as both NCSL's lead analyst of federal education policy and serve as its primary representative on education matters before Congress and the administration, including, primarily, the U.S. Department of Education.

[3:34:08 PM](#)

MR. REID continued:

I am testifying today to provide a "Summary of the Implementation of the Federal 'Maintenance of Equity' Provision" that was included in the American Rescue Plan Act of 2021 (ARPA).

I have been monitoring this provision closely for the entirety of its existence. I had conversations with the congressional staffers who wrote the provision during the bill drafting process and have been in regular communication with the U.S. Department of Education about its implementation since the spring of 2021.

My testimony today reflects my understanding of the complete timeline of the conception and implementation of this provision. I hope that a thorough summary provides the legislature with the background and information it needs to inform any action it wishes to take.

NCSL does not recommend policy to the legislatures on issues that are internal to the states, including this issue.

[3:34:52 PM](#)

MR. REID continued:

However, NCSL does lobby the Congress, the White House and federal agencies for the benefit of state legislatures in accord with the policy directives and resolutions recommended by the Standing Committees and adopted at the NCSL Annual Business Meeting. All policy directives and resolutions must be approved by three-quarters of states present at the business meetings.

As part of my duties in representing NCSL before the federal government, I staff the NCSL Standing Committee on Education, a body of legislators and legislative staff that are selected by their legislature's leadership to develop positions on state-federal issues to guide NCSL's lobbying efforts.

The NCSL Standing Committee on Education has adopted policy pertaining to the Maintenance of Equity provision, urging the federal government to provide states with full waivers and maximum flexibility. NCSL

believes that state education finance decisions are solely a matter of the states, owing to the plenary power they have in education.

3:35:40 PM

MR. REID moved to slide 2 displaying ARPA Maintenance of Equity State Provision 1 and continued:

[Original punctuation provided.]

NCSL's position should in no way be construed to direct how the Alaska legislature should respond to the matter at hand.

Much of the information I will provide in today's testimony has been gleaned by direct conversations I have had with key federal stakeholders in the process of representing NCSL's interests.

For my testimony, I will first offer a full timeline of the implementation of the Maintenance of Equity provision and conclude my testimony with a summary of critical observations that are worth consideration by legislatures when seeking to understand this provision.

3:36:21 PM

MR. REID on slide 2, continued his testimony:

[Original punctuation provided.]

In February 2021, I was made aware of a proposed provision known as "Maintenance of Equity" that was being drafted by congressional committee staff in the Senate Health, Education, Labor and Pensions Committee's majority office.

I participated in conversations with the staff who wrote the provisions and will relay what I believe are the intentions that undergird the policy.

Historically, Congress includes a Maintenance of Effort provision as a fiscal condition states must agree to in order to receive stimulus funds for education. This typically requires states to maintain aggregate levels of education funding.

In early 2021, there was a common view that states were expected to experience precipitous revenue declines and would likely have to cut funds to education.

Congress incorporated this view into its Maintenance of Effort provision for the second tranche of stimulus funds for education through the Elementary and Secondary Education Relief Fund (ESSER), as passed through the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA).

This Maintenance of Effort provision allowed states to cut funding to education, so long as they only reduced funds in proportion to the overall reduction in the state budget. This same Maintenance of Effort provision was included again in the eventual ARPA.

However, congressional staff and others with input on the drafting process, feared repeating a dynamic that occurred during the Great Recession when 29 states made across-the-board budget cuts to education in the face of revenue declines.

While this action may have been fair in the context of funding between various agencies, enacting an across-the-board funding cut to K-12 education has a disproportionate impact on school districts that are more reliant on state funding due to having a lower property tax base and thus less ability to raise local funds to support their schools.

In other words, these districts see a greater share of their budget cut without the ability to compensate through increased local fund contributions. These districts typically, but not always, serve relatively higher populations of low-income students compared to other districts.

[3:38:13 PM](#)

MR. REID on slide 2, continued his testimony:

[Original punctuation provided.]

To prevent this dynamic, while also allowing states to make overall funding cuts without needing to seek a

Maintenance of Effort waiver, congressional staff wanted to create a backstop to provide additional protections to education funding in districts that serve relatively larger populations of low-income students.

This was, I believe, the primary motivation behind the drafting of a new, first-of-its-kind "Maintenance of Equity" provision.

The American Rescue Plan Act (ARPA) was enacted on March 9, 2021, and included an additional \$122 billion in funding for education in states through the ESSER fund.

While there were some doubts as to whether a "Maintenance of Equity" provision would ultimately make it into the final bill, it was indeed included.

The Maintenance of Equity provision includes four prongs, two for states and two for local school districts.

According to the statute, states could not:

- "Reduce State funding (as calculated on a per-pupil basis) for any high-need local educational agency in the State by an amount that exceeds the overall per-pupil reduction in State funds, if any, across all local educational agencies in such State in such fiscal year."

[3:39:31 PM](#)

MR. REID moved to slide 3 displaying ARPA Maintenance of Equity State Provision 2 and continued his testimony:

[Original punctuation provided.]

- "Reduce State funding (as calculated on a per-pupil basis) for any highest poverty local educational agency below the level of funding (as calculated on a per-pupil basis) provided to each such local educational agency in fiscal year 2019.

And school districts could not:

- "Reduce per-pupil funding (from combined State and local funding) for any high-poverty school

served by such local educational agency by an amount that exceeds the total reduction in local educational agency funding for all schools served..."

- "Reduce per-pupil, full-time equivalent staff in any high-poverty school by an amount that exceeds the total reduction in full-time equivalent staff in all schools served..."

[3:40:03 PM](#)

MR. REID on slide 3 continued his testimony:

[Original punctuation provided.]

While guidance for the ARPA Maintenance of Effort provision was released in April 2021, the initial guidance for the Maintenance of Equity was not released until June 9, 2021.

I believe the guidance interpreted the statute in two key ways that have had considerable implications for the implementation of Maintenance of Equity over the past three years.

First, the guidance asserted that states must calculate compliance with the state Maintenance of Equity provision even if they did not enact a statewide spending cut to education.

This was a major update. To my eyes, and some others, a plain language reading of the law supported the interpretation that Maintenance of Equity only applied in instances where state education budgets were cut.

This interpretation also seemed to align with what I believed to be the Congressional intent behind the proposal—that in the event that a state must cut education funding, it must spare districts with higher populations of low-income students from the disproportionate impact of those cuts.

Even the Department's own guidance acknowledges this intent: "Accordingly, if State or local funds are cut, the maintenance of equity provisions ensure that LEAs and schools serving a large share of students from low-income backgrounds do not experience a disproportionate share of such cuts."

One immediate implication of this interpretation, that Maintenance of Equity applied in the absence of overall spending cuts to education, was that it became very difficult, if not impossible, for legislatures to know during the budget process whether they would ultimately be in compliance with the Maintenance of Equity provision and take appropriate action to ensure compliance.

[3:41:34 PM](#)

MR. REID on slide 3 continued his testimony:

[Original punctuation provided.]

Compliance would ultimately become a retrospective assessment that could only be made after a state funded its education budget, distributed funds to districts via its state education funding formula and then compared the state's data with the federal Maintenance of Equity compliance calculations. These federal compliance calculations could not be administered until after states passed their budgets and sent requested initial funding data to the Department.

The fact this guidance was issued in mid-June, towards the end of the FY 2022 budget process, did not make matters of compliance any easier from the state legislative perspective, especially for those states who had already concluded their legislative session.

In this sense, the conditions of compliance were not all clearly known to legislatures when they agreed to accept these federal funds and then make timely fiscal decisions for FY 2022.

[3:42:35 PM](#)

SENATOR KIEHL agreed that the timeline describing the release of guidance was frustrating. He asked if Mr. Reid could provide context by elaborating what else was happening in the federal government at that time.

[3:42:55 PM](#)

MR. REID replied that from the U.S. Department of Education's perspective, the initial burden of passing the funds was figuring out distribution to states and schools. The pandemic

was at its peak, and the federal government was also focused on schools reopening. He stated his belief that April 2021 was when the first vaccine became widely available. From the federal perspective, several competing priorities likely delayed the timeline for supporting education. He said another probable reason for the delay was that it was a novel state education finance provision that the federal government had never handled before. There was a sense that the provision might not make it into the final package due to a specific test applied to the process by which Congress passed the bill. Preparation and communication between Congress and the administration may have been lacking. He added that it took several months, amid other priorities, to issue guidance, emphasizing that guidance does not have the same force and effect as regulation.

[3:44:40 PM](#)

SENATOR KIEHL recalled that when the Elementary and Secondary School Emergency Relief (ESSER) Fund passed, 4.3 million Americans were out of the workforce, and over half a million had died from the virus. Congress was trying to prevent economic collapse by printing money. He noted that the Alaska legislature relied on guidance documents at that time because federal regulations take years to implement. He asked if the timeframe from ESSER's passage to the release of guidance was 13 to 14 weeks.

[3:45:26 PM](#)

MR. REID replied about three months. He mentioned the department's guidance acknowledges that it comes out towards the end of the budget process for the fiscal year in which the provisions apply and that complications from the timing of this guidance exist. He noted that the complications are in part due to the American rescue plan passing mid-budget process for many states. He said the way it was interpreted makes it very difficult for states to know how they're going to ultimately comply with this provision while they were making budget decisions.

[3:46:11 PM](#)

MR. REID on slide 3 continued his testimony:

[Original punctuation provided.]

Second, the guidance clarified that the Department did not believe it had the ability to offer waivers from

the state and local Maintenance of Equity provisions, as it did it for the Maintenance of Effort provision.

However, the U.S. Department of Education would later issue updated guidance in December 2021 which effectively waived the two prongs of the local Maintenance of Equity provision for all school districts in the country.

The ARPA statute did grant exemptions under the local Maintenance of Equity provisions for districts in certain circumstances, including those experiencing "an exceptional or uncontrollable circumstance, such as unpredictable changes in student enrollment or a precipitous decline in the financial resources of the LEA, as determined by the Secretary."

In the updated December 2021 guidance, the Department reasoned that all districts faced "fluctuating school enrollments and uncertain revenue collection as a result of the pandemic" and thus could qualify under the exemption.

So long as a district certified it did not and would not "implement an aggregate reduction in combined State and local per-pupil funding" for FY22 and FY23, the Department agreed to waive the local Maintenance of Equity provision for school districts.

[3:47:33 PM](#)

MR. REID on slide 3 continued his testimony:

[Original punctuation provided.]

I will note that this very broad flexibility was not applied to the state Maintenance of Equity provisions.

The lack of a waiver process would have considerable implications as it did not allow states with exceptional circumstances to receive appropriate exemptions and instead set up a prolonged and often confusing compliance process that lacked transparency.

[3:47:53 PM](#)

MR. REID moved to slide 4 a table showing examples of compliance calculations with State Maintenance of Equity Provision 1.

[Original punctuation provided.]

The U.S. Department of Education continued to update the Maintenance of Equity guidance through 2021 and into 2022. Updates were made in August, October and December of 2021.

Over this time, NCSL became aware of at least three states that identified early signs of discrepancies between their state funding formula determinations and the Maintenance of Equity compliance calculations.

Despite these cases, concerns that states would face widespread difficulties with Maintenance of Equity seemed to wane.

This view was seemingly supported by the stronger-than-expected fiscal position of states. Despite fears of revenue declines, the NASBO Fall 2021 Survey indicated that 45 states were on pace to maintain or increase funding for K-12 education in FY 2022, including 41 states that indicated funding increases.<sup>1</sup>

Final expenditure data from NASBO showed 41 states had enacted funding increases for K-12 education, with a median increase of 4.6 percent.

[3:48:53 PM](#)

CHAIR TOBIN said the state of Alaska, did increase student funding, as seen on the slide 4. It was increased by \$30 due to the Alaska Reads Act in 2023. She said she wanted to ensure it is known publicly that the increase was not a significant increase, unless the information on slide 4 is also including debt relief and major maintenance. She asked Mr. Reid to expound on what is included in "state spending changes."

[3:49:32 PM](#)

MR. REID said he doesn't know the full details that the National Budget Officers Association (NBOA) uses to calculate numbers, but people in the Education Finance Field consider it a very reliable document for budget information. It may not always be correct, but they note a 6.1 percent increase between FY 2021 - 2022 in Alaska. This is in the final expenditure report. He recalled that the survey done in the initial expenditure report of states in fall 2021 initially indicated that Alaska would see a decrease in education funding. However, final data suggests a

6.1 percent increase. For FY 2022 - 2023 they indicate an 8.9 percent increase.

[3:50:10 PM](#)

CHAIR TOBIN said the committee knows there was not a Base Student Allocation (BSA) increase in either of those years and therefore assumes on the increase is from debt relief and major maintenance spending. and not money that went to per pupil spending.

[3:50:50 PM](#)

MR. REID said he does not see any additional notes of discrepancies by the NBOA for Alaska, so he can't offer any additional context. Regardless, the data generally provides evidence to the idea that fiscal conditions in states were really strong, and the NCSL would have expected on the widespread strength of fiscal conditions and widespread increases for funding in education among states, that there wouldn't have been near as many compliance issues with the maintenance of equity as was ultimately revealed.

[3:51:29 PM](#)

MR. REID on slide 5 continued his testimony:

[Original punctuation provided.]

However, on July 5, 2022, days after the close of FY 2022, the U.S. Department of Education sent a form letter to 39 states explaining that the Department had identified instances of noncompliance with the Maintenance of Equity provision. Ultimately, I believe 41 to 42 states received this initial letter.

The same form letter was sent to each state and was not made public. The Department, when asked during a follow up conversation, would not identify the states that had received this letter.

The letter also did not provide any information about the scope of the compliance issues in each state. The letter merely said "The initial FY 2022 data you submitted indicates that your State is not maintaining equity in one or more high-need or highest-poverty LEAs."

[3:52:17 PM](#)

MR. REID moved to slide 6 and continued his testimony:

[Original punctuation provided.]

These letters were based on initial data submitted by states during the summer and fall of 2021 rather than the final FY 2022 data that was tentatively due days before on June 30, 2022.

Given the encouraging data about widespread state-by-state funding increases for education, I recall there being quite a bit of surprise and confusion among the small group of us who have followed this provision closely from its inception.

As you can imagine, there was quite a bit of confusion in states, especially when there was no indication in the letter of the scope and scale of the compliance issues that had been identified.

NCSL, along with representatives from groups representing state education agencies and governors' offices, sought more details from the Department in a private meeting in early August 2022.

We learned that the Department was sharing details about compliance issues with state agency staff. It was unclear how those details were being shared and at what level of agency staff those details were being shared with.

[3:53:11 PM](#)

MR. REID continued:

Anecdotally, I understand details were often shared through phone calls with state agency staff who could vary from mid-level to more senior staff.

The Department would not share any specific state details with us. The Department did provide a high-level summary of compliance issues. They said there were some states with only a handful of districts with compliance issues, while other states had districts with cumulative funding gaps in the hundreds of millions of dollars.

Given the implications that compliance issues with these provisions have for state legislatures, I asked

the Department to include key legislative stakeholders in compliance conversations. While I don't believe this request was granted often, if at all, the Department did include me on periodic update calls and later passed along finalized compliance correspondence.

While I was not made privy to any specific compliance conversations, I have gleaned over time a sense of the issues that were causing states to be out of compliance.

[3:54:12 PM](#)

MR. REID moved to slide 7 a table Determining "Highest-Poverty" and "High-Need" LEA's and continued his testimony:

[Original punctuation provided.]

As you recall, there are two state prongs to the Maintenance of Equity provision.

One requires that the "highest-poverty" local education agencies (LEAs) receive funding above the Fiscal Year 2019 level.

According to federal guidance, these districts are defined as those serving the highest proportion of low-income students and collectively account for 20% of the state's student population.

From my understanding, states have had fewer compliance challenges with this provision given the widespread increases for education funding.

The other prong requires that low-income districts, or "high-need" LEAs, do not receive less funding year-over-year, on a per pupil basis, compared to more high-income districts.

According to federal guidance, these districts are defined as those serving the highest proportion of low-income students and collectively account for 50% of the state's student population.

This provision is most likely responsible for compliance issues, which frequently occur even when

states have increased overall per pupil spending on education.

Even when state funding increases, the manner in which the funding is distributed can result in schools receiving less funding than they had received in the prior year.

As I will detail, many of the school finance strategies that are responsible for variable year-over-year funding are most often meant to target resources to certain student populations that require more resources to support their education or to find the appropriate balance between the state share of funding and a local school community's fiscal capacity.

While there are many and varied definitions of equity, these strategies are commonly understood in the education finance world to be tools of equity in school funding.

[3:56:12 PM](#)

MR. REID continued:

As you will see, the various and complex strategies that states use to distribute funding for education does not neatly align with the federal Maintenance of Equity test, which is fairly simple and based on a single and static variable- a student's income status.

There are at least three key state education finance strategies that may cause non-compliance with Maintenance of Equity.

It's worth noting that many states have incorporated these education finance strategies in response to court settlements that directed the state to more effectively fund and equitably finance education in the state.

These strategies can individually cause compliance issues with Maintenance of Equity calculations, but the interaction among these mechanisms may cause even more complicated compliance issues.

[3:56:49 PM](#)

MR. REID moved to slide 8 a sample compliance letter from U.S. Department of Education and continued his testimony:

1. States with foundation funding formulas

Thirty-seven states use foundation funding formulas. The simple concept behind this education finance strategy is to target education funding based on student characteristics to ensure student populations that may need extra education support receive more resources. This is the prevailing trend in state education finance to provide more equitable education funding. While every student gets a base amount, states provide additional funding "weights" for certain student populations. These can vary by state, but common populations for targeted funding are low-income students, students with disabilities and English learners. Funding is then distributed to districts based on student enrollment and attendance patterns.

Many states with foundation funding formulas likely experienced compliance issues with Maintenance of Equity. This is likely due to enrollment pattern changes across districts. As you know, enrollment and attendance fluctuated substantially in school districts across the country during School Years 2021-2022 and 2022-2023, especially among vulnerable populations of students, which usually receive additional weighted funding. A school district that sees enrollment declines in populations that received additional funding weights could see an overall per pupil funding decline even if the state provided a base per pupil increase through the funding formula.

[3:58:49 PM](#)

MR. REID on slide 8 continued his testimony:

[Original punctuation provided.]

3. States with "hold harmless" provisions

States that have districts with rapidly declining enrollment will sometimes enact "hold harmless" provisions on top of a weighted student funding formula in order to stabilize a district's finances and provide a fiscal "soft landing" as the district

makes plans to downsize. This is common for districts in rural areas where communities are reliant on one school district. Over time, the state will slowly phase out this hold harmless provision, which results in reductions in state aid, even though those reductions are less drastic than would have occurred if an enrollment-based formula completely drove the levels of state funding.

NCSL is aware of at least one state which had districts that were initially deemed noncompliant due to the presence of these hold harmless provisions.

As I alluded to before, the interaction of these strategies could result in noncompliance and make matters of demonstrating compliance very complicated. NCSL is aware of one state that was in the middle of carrying out a seven-year funding equalization plan, coupled with a revised weighted student funding formula, that was disrupted by the prospect of noncompliance with the Maintenance of Equity provision. In that plan, the state had identified districts that were relatively overfunded and districts that were relatively underfunded. Over the course of the seven-year plan, the state was slowly transferring additional money to the underfunded districts by reducing state funding in the overfunded districts, while allowing those districts to enact local tax levies above a statutory cap to replace the loss of state funding.

In contrast to the wide array of state education finance strategies, it's worth noting the Maintenance of Equity test is based on a single variable- a student's income status.

[4:00:22 PM](#)

MR. REID on slide 8 continued his testimony:

[Original punctuation provided.]

While this is an important factor to consider, and a variable that is accounted for in many foundation funding formulas, there are many other important measures that states take into account when distributing education funding, including student factors such as instructional needs related to

disability or English learner status, or the local tax capacity to fund education.

While some districts may have experienced reductions in funding, it was often not the result of state spending cuts, but rather a passive reduction in funding after the application of state funding formulas, which are often calibrated to direct resources towards the students who benefit the most from equity efforts.

Indeed, in private conversations, the Department indicated to me that we have not seen states deliberately cut funding to low-income schools.

[4:01:03 PM](#)

SENATOR KIEHL asked if the state that was in the middle of a long-term shift in its education funding made an adjustment to be compliant with the maintenance of equity rules.

[4:01:24 PM](#)

MR. REID replied yes, the state ultimately made supplemental appropriations to comply.

[4:01:32 PM](#)

SENATOR KIEHL asked for the timeframe of the state's adjustment process.

MR. REID clarified that the discussion was about New Jersey, which began conversations about compliance as early as fall 2021. He noted that the state likely realized early on that its funding reform wouldn't align with federal definitions of compliance. While New Jersey ultimately became compliant after making supplemental appropriations, he was unsure if those funds came from state resources or if flexible federal funding was used to meet compliance.

[4:02:52 PM](#)

MR. REID on slide 8 continued his testimony:

[Original punctuation provided.]

Over the last year and a half, the U.S. Department of Education has been working with state education agencies to resolve widespread compliance issues for fiscal year 2022 and I believe proactively address issues in fiscal year 2023.

As I mentioned earlier, the Department conducted "technical assistance" calls with state agency staff or engaged in formal, but often private correspondence to work towards resolution.

As I understand the compliance process, state agency staff would attempt to demonstrate compliance by recalculating state data in ways that would better match the requirements of the Maintenance of Equity compliance tests.

In cases where new data runs did not sufficiently resolve discrepancies between the state funding formula and the federal calculations, the Department would invite states to submit "small Local Education Agency tolerance" proposals.

These proposals were invited in cases where enrollment changes in small districts could have significant impact on per-pupil state funding. According to federal guidance, a state agency, "may propose to the Department a written plan for a reasonable level of tolerance when calculating whether it has maintained equity for these LEAs."

The Department began sending out batches of compliance notification letters during the fall of 2022. While the letters did not directly affirm compliance, they typically recognized a state's "ongoing commitment to the maintenance of effort requirements."

Many letters did not include any background details as to how compliance was ultimately determined, although a few state letters contained specific details, typically if a state had submitted a "small Local Education Agency tolerance proposal."

[4:04:36 PM](#)

MR. REID on slide 8 continued his testimony:

[Original punctuation provided.]

As I mentioned before, the lack of formal waiver process made it difficult for state representatives, such as myself, to understand the true scope of state issues and assess how consistently the Department was

applying the same rationale across states when signaling compliance.

From the initial count of 41 to 42 states with compliance issues, the Department later revealed that at least six states were found compliant once the Department calculated its final FY22 data instead of the initial FY22 data it relied on when first communicating noncompliance to states.

By late November 2022, I understand that a total of 13 states had demonstrated sufficient compliance with the provision.

Over the course of the next year, from late 2022 into fall 2023, the Department communicated batches of final compliance letters to states on a month-to-month basis, usually at a pace between two to four states a month.

[4:05:27 PM](#)

MR. REID continued:

By the end October 2023, the Department communicated to me that nine states had still not demonstrated sufficient compliance.

By the end of 2023, four states remained, including Alaska. Each of these states were considered by the Department to have exhausted attempts to come into compliance through their previously offered tolerance proposals.

The Department sent letters requesting these states make supplemental appropriations as remedy for the funding discrepancies identified by the Maintenance of Equity provision.

As I understand, by this point, at least five other states had agreed to make supplemental appropriations after being unable to resolve outstanding compliance issues.

Some states made supplemental appropriations through legislative action. Others were able to use funds through the federal Coronavirus Relief Fund (CRF) or State and Local Fiscal Relief Fund (SLFRF) after the

Department issued guidance in January 2023 that permitted this.

[4:06:27 PM](#)

MR. REID on slide 8 continued his testimony:

[Original punctuation provided.]

In the December 2023 letter, Alaska was asked by the Department to make supplemental appropriations of nearly \$8 million to three districts for FY 2022 in order to comply with Maintenance of Equity.

However, that number changed when the Department sent its most recent letter in March. The letter now asks for over \$22 million for two districts for FY 2022. One of these districts was identified in the previous letter, another was newly identified, and two other districts included in the previous letter were dropped entirely.

The total request for additional state appropriations for FY 2022 and FY 2023 totals nearly \$30 million. To my knowledge, the Maintenance of Equity provision is the first time the federal government has been given a direct interest in state education finance decisions.

The decision by the U.S. Department of Education to apply this provision in the absence of overall state funding cuts, without providing an opportunity for states to seek waivers, has led to considerable complications for states, and given the federal government unprecedented influence over state education finance decisions. Given the states' plenary authority in education, this is an unusual and, in some ways, extraordinary federal authority.

[4:07:59 PM](#)

MR. REID moved to slide 2 and continued his testimony:

[Original punctuation provided.]

To sum up, the Department's interpretation of the Maintenance of Equity provision, as communicated in guidance and understood through its compliance processes, has been consequential in three key ways:

1. States were unable to make proactive decisions to demonstrate compliance with the provision. Compliance could only be assessed after state education budgets were allocated through state education finance formulas and compared to federal calculations.
2. States experienced widespread compliance issues that were not the result of enacting spending cuts to education, but rather were based in technical discrepancies between state education finance formulas and the Maintenance of Equity provision. The Maintenance of Equity does not account for the variety of strategies that states use to target funding to critical student populations.
3. States had limited or opaque pathways to seek full relief from the provision.

While many states were able to demonstrate compliance over multiple attempts, the compliance process often lacked transparency and required considerable effort by both state education agency staff and staff at the U.S. Department of Education. To comply, some states have been asked to make significant supplemental appropriations that circumvented their state education finance formula, even when they had already increased overall spending on education.

I thank you for the opportunity to testify before this committee and look forward to answering any questions you may have.

[4:09:14 PM](#)

SENATOR GRAY-JACKSON acknowledged the complexity of the subject matter and asked for clarification regarding flexibility and waivers. She referenced the National Conference of State Legislatures' (NCSL) position urging the federal government for full waivers related to the maintenance of equity provision. She requested specific examples where increased flexibility or waivers could have mitigated compliance issues without compromising the goals of the provision.

[4:09:59 PM](#)

MR. REID provided an example highlighting compliance challenges with the maintenance of effort provision. He explained that the provision required states to maintain education funding as the same proportion of their budget as the previous year, allowing

for cuts without waivers. However, many states increased education funding but not at the same proportion as their overall budget increase in FY 2022-2023. This led to states being considered out of compliance despite raising education funding. He noted that Congress included specific instructions for a waiver process, and the Department of Education granted waivers favorably to states that increased education funding but did not meet the proportional requirement. States continued without consequences after receiving these waivers.

[4:11:40 PM](#)

MR. REID expressed the hope that the Department of Education would provide wholesale exemptions for states that maintain or increase education funding and promote equity, even if their funding formulas differ from federal interpretations. He noted that such states should not need to go through extensive compliance reviews but instead receive exemptions from the provision. He highlighted that a broad exemption was already provided for the local maintenance of equity provision due to its complexity, which was recognized after stakeholder feedback. He suggested that if the same flexibility offered for the local maintenance of equity and maintenance of effort waiver process could be applied to the state portion, states distributing funding equitably could be exempt from full compliance calculations.

[4:13:07 PM](#)

CHAIR TOBIN asked for clarification, specifically inquiring if the federal government had offered a waiver process to any state regarding compliance with the maintenance of equity provision.

MR. REID replied that the federal government has been clear in both guidance and private conversations that it does not believe it has the authority to offer waivers for the maintenance of equity provision. He referenced a July 2022 letter sent to 39 states, which explicitly stated there was no opportunity for waiver flexibility. He offered to provide the letter to the committee and emphasized that, due to the lack of waiver authority, the department's compliance processes have been complicated and prolonged as they seek flexibility without offering exemptions.

CHAIR TOBIN asked if Alaska is the only state that has not moved to comply for FY 2022.

MR. REID replied that is his understanding.

[4:14:17 PM](#)

SENATOR KIEHL acknowledged that his previous statement was unclear and asked if the National Conference of State Legislatures (NCSL) considered the tolerance plans for the smallest districts to be laudable or problematic.

[4:14:38 PM](#)

MR. REID stated that the general hope is for the Department of Education to provide states with maximum flexibility. The National Conference of State Legislatures (NCSL) supports any federal options allowing states to demonstrate that their finance formulas align with the spirit of the provision, particularly when funding for four states was increased. He acknowledged that while the department has attempted to provide flexibilities, there is a lack of transparency around what those efforts always entail. However, NCSL did receive guidance indicating some flexibility through small tolerance proposals, which provided some transparency and flexibility for several states.

[4:15:28 PM](#)

SENATOR KIEHL expressed concern, noting that Alaska's plan appears to disregard some of the poorest and most struggling school districts, which have a history of discrimination and issues the maintenance of equity provision aims to address. He specifically mentioned districts like Lake and Peninsula, Kashunamiut, and Chatham—small, remote, predominantly Alaska Native, and low-income areas. He asked how this approach aligns with the intent of the maintenance of equity provision.

[4:16:15 PM](#)

MR. REID suggested that the final numbers communicated by the department may reflect outcomes from various tolerance proposals that have already been offered and accepted for certain districts. He speculated that over the past year or so, compliance discussions may have led to certain flexibilities already being factored in. However, there may be aspects of Alaska's funding distribution that cannot accommodate further flexibility, leading to the request for supplemental appropriations. He explained that the department has provided two main flexibilities: the small tolerance proposal and recalculating data to see if it aligns with the provision. When these options are exhausted, the department typically requests supplemental appropriations. He noted that while there could be other flexibilities at play, he was not aware of them.

[4:17:59 PM](#)

SENATOR KIEHL remarked that the situation sounded like a colossal level of flexibility, approaching a waiver of the provision's intent. He then asked whether it was typical for the federal government to allow a state to use federal COVID relief funds to meet the maintenance of equity requirements, as was allowed in Alaska in January 2023. He questioned whether this practice—using federal funds to satisfy a requirement for receiving additional federal funds—was a common or flexible approach.

[4:18:45 PM](#)

MR. REID explained that in this case, it was not unusual for the department to offer flexibility. He noted that the department allowed states to draw from two funding sources for flexibility. The first was the Coronavirus Relief Fund (CRF), part of the CARES Act passed in March 2020, which provided fiscal relief for states. While CRF funds could be used for pandemic response efforts, they were explicitly prohibited from being used for revenue replacement.

MR. REID noted that under the American Rescue Plan, Congress passed a \$350 billion State and Local Fiscal Relief Fund, with approximately \$195 billion allocated to states. While intended for pandemic response and a wide variety of efforts, the Department of Treasury later ruled that states could use the funds for revenue replacement. He stated his belief that this was inconsistent with the original congressional intent behind the creation of the fund. This ruling provided states with significant flexibility in using these funds.

[4:20:05 PM](#)

MR. REID noted that under the American Rescue Plan, Congress passed a \$350 billion State and Local Fiscal Relief Fund, with approximately \$195 billion allocated to states. While intended for pandemic response and a wide variety of efforts, the Department of Treasury later ruled that the funds could be used by states for revenue replacement, which MR. REID believed was inconsistent with the original congressional intent behind the creation of the fund. This ruling provided states with significant flexibility in using these funds.

[4:21:22 PM](#)

MR. REID noted that the timing of the January 2023 guidance was significant, as it came after the state obligation date for the first Coronavirus Relief Funds, but still within the obligation period for the State and Local Fiscal Relief Funds. He stated his belief that the obligation deadline is September 30, 2024,

and can be spent through 2026. He pointed out that most states had already appropriated these funds in previous budget processes, meaning that while adjustments could be made, many of the funds were likely already accounted for. He acknowledged that it was somewhat unusual for federal funds to be used to comply with other federal policies, but NCSL believes this was the congressional intent. He also noted that the Department of Treasury's interpretation allowed these funds to be used to offset state revenue reductions or as now interpreted, to comply with other federal policies.

[4:22:35 PM](#)

CHAIR TOBIN stated her intent to ask Mr. Bell about whether there are remaining federal funds to help Alaska move into compliance.

[4:22:52 PM](#)

SENATOR GRAY-JACKSON asked for assistance in brainstorming different approaches for Alaska to address its current noncompliance with the maintenance of equity provision. She highlighted the complex interaction between Alaska's state education finance strategy and federal calculations and sought suggestions that would respect Alaska's unique challenges while maintaining equitable funding.

[4:23:34 PM](#)

MR. REID stated that he does not know Alaska's finance system well enough to provide specific advice but emphasized the importance of understanding the federal calculations behind the noncompliance. He suggested that the federal government is essentially overlaying its own policy on top of Alaska's funding formula, creating gaps. He encouraged Alaska to seek out the data and details of what the federal government is identifying, and recommended investigating whether the differences are arbitrary or a priority of important to Alaska.

SENATOR GRAY-JACKSON replied the response was "good enough."

[4:25:06 PM](#)

CHAIR TOBIN explained that for transparency, the committee has requested all communications between the Alaska Department of Education and Early Development and the federal government to review the documents thoroughly. She also mentioned that the U.S. Department of Education committed to providing its communications with the state. Comparing the documents will determine the best path forward. She acknowledged concerns and a letter from the U.S. Department of Education highlighting Alaska

is the only state not in compliance. She emphasized the importance of meeting Alaska's constitutional obligation and expressed worries about straining the state's relationship with federal partners.

[4:26:33 PM](#)

MR. REID expressed his willingness to provide background information on the [U.S.] Department of Education's enforcement mechanisms, including details on what "high risk" status might entail. He thanked the committee for inviting him, acknowledged the complexity of the topic, and hoped to assist in ongoing discussions.

[4:27:08 PM](#)

CHAIR TOBIN invited Mr. Bell to the dais.

[4:27:27 PM](#)

CONOR BELL, Fiscal Analyst, Legislative Finance, Legislative Affairs Agency, Juneau, Alaska, introduced himself.

[4:27:39 PM](#)

CHAIR TOBIN referenced Mr. Reid's statement about a provision in the guidance allowing the use of remaining federal relief funds to meet compliance. She inquired whether Alaska still had those funds available and what the state's options are to address the situation.

[4:27:56 PM](#)

MR. BELL stated that Alaska currently has roughly \$3 million in unallocated Coronavirus State and Local Recovery Funds, which falls far short of the \$29 to \$30 million needed to meet compliance. He mentioned that the \$3 million is included in the governor's budget, with a proposal to reappropriate it for the Department of Corrections. However, as it stands, that \$3 million remains available from the relief funds.

[4:28:31 PM](#)

CHAIR TOBIN expressed hope that further clarity could be provided on how Alaska's hold harmless provision may have impacted the state's maintenance of equity compliance. She noted that this was a point raised by Mr. Reid and sought to understand how the provision might have influenced the federal calculations.

[4:28:48 PM](#)

MR. BELL explained that Alaska's hold harmless provision is designed to protect school districts from significant funding

losses due to large drops in enrollment. During the pandemic, many students in districts like Anchorage shifted from in-person learning to correspondence programs, causing drops in enrollment. Over time, through a series of step-downs, the hold harmless provision limited how much funding could decrease. By FY 2022, enough reduction occurred to affect funding levels. Additionally, even though students moved to correspondence programs, they were still funded at the regular correspondence rate, adding to the hold harmless provision's impact.

[4:30:05 PM](#)

SENATOR STEVENS asked what options were available to resolve the conflict between Alaska's stance and the federal Department of Education. He noted that the state believes it has acted correctly and is not required to return any funds, while the federal department insists that Alaska owes money. He sought clarity on possible pathways to resolve the disagreement.

[4:30:33 PM](#)

MR. BELL stated that resolving the issue involves policy decisions beyond his purview but outlined three main options: the legislature could choose to appropriate additional funds, regardless of the federal requirement; the governor's office might decide to request supplemental funding; or the Alaska Department of Education and the U.S. Department of Education could reach a new agreement different from the current stance. He did not comment on the likelihood of any specific option.

SENATOR STEVENS acknowledged the challenging situation, expressing that the state would likely need to fund the requirement one way or another, despite the already difficult budget circumstances. He noted that the outcome remained to be seen.

[4:31:35 PM](#)

SENATOR KIEHL asked for clarification on the federal government's compliance requirement, questioning whether it involved returning the funds to the federal government or directing the money to school districts.

MR. BELL clarified that the \$30 million in question would be distributed to specific school districts. While the U.S. Department of Education has the authority to revoke around \$200 million in ESSER (Elementary and Secondary School Emergency Relief) funding as a potential consequence, it has not yet indicated that it would take this step. The additional

appropriation being requested is intended for school districts, not as a payment to the federal government.

[4:32:30 PM](#)

SENATOR KIEHL opined that the legislature would likely aim to avoid any scenario where \$200 million could be clawed back from school districts. He asked for information on the updates and guidance that the nonpartisan legislative finance division had received from the executive branch regarding the state's obligations and options. He referenced Mr. Reid's mention of guidance from January 2023 about compliance opportunities and inquired when the legislature first became aware of these issues to allow for budget planning.

[4:33:06 PM](#)

MR. BELL stated his belief that it was perhaps late last summer.

SENATOR KIEHL asked if it was after the last legislative session.

[4:33:27 PM](#)

MR. BELL replied someone else in the [Legislative Finance] office may have had information, but he was not aware of it.

SENATOR KIEHL asked whether there was any indication at that time of the scope of the noncompliance, including ballpark figures, order of magnitude, or timeframes related to the issue.

[4:34:03 PM](#)

MR. BELL explained that the initial estimate for noncompliance was much lower, around \$9 million, based on the department's early calculations. This estimate increased significantly to \$30 million after the U.S. Department of Education advised the state to include the hold harmless provision in its calculations.

[4:34:34 PM](#)

SENATOR KIEHL whether the December letter from the U.S. Department of Education, indicating an amount just under \$8 million, aligned with the earlier \$9 million estimate or if it raised concerns about the figure.

[4:34:57 PM](#)

MR. BELL asked Senator Kiehl to repeat the question.

SENATOR KIEHL stated his belief that the first letter from the U.S. Department of Education was in January, with three school districts, at a total first year cost of about \$7.8 million.

[4:35:19 PM](#)

MR. BELL replied that amount seemed correct, and he stated his belief there was possibly around a million dollars in FY 23.

[4:35:29 PM](#)

CHAIR TOBIN noted that, according to Mr. Reid's testimony, he and others in his agency had requested that the U.S. Department of Education and local agencies communicate with additional education stakeholders. She pointed out that this communication did not occur, leaving many involved in education policy unaware of the issue until the December 2022 letter. She also mentioned that Mr. Reid had indicated there was a letter sent to districts in July 2022, which the department had previously believed to be erroneous. She stated that the department would be present at a future meeting to help clarify the timeline of communications.

[4:36:26 PM](#)

SENATOR GRAY-JACKSON stated that the department has until Saturday to respond to the federal government and plans to send a letter on Friday. The department suggested delaying any discussion of an appropriation until after the letter is sent. She asked for an opinion on whether this approach was advisable and the best way to handle the situation.

[4:36:53 PM](#)

MR. BELL apologized and stated that he could not advise on whether delaying an appropriation discussion was advisable, noting that the amount in question was still under dispute. He indicated that he could not provide a definitive answer either way.

[4:37:10 PM](#)

SENATOR STEVENS asked for clarification on the compliance issues for 2022 and 2023, noting that the state seemed to be out of compliance in different ways for each year. He requested a breakdown of the differences, and the respective dollar amounts for those two years to better understand the situation.

[4:37:33 PM](#)

MR. BELL explained that the amounts owed for FY 2022 are significantly larger than for FY 2023. For FY 2022, Anchorage School District owes approximately \$15 million, and Kenai Peninsula District owes \$7.2 million. For FY 2023, the total amount is around \$6-7 million, with the largest amounts being \$3 million for Fairbanks, \$2.5 million for Kenai, \$1.4 million for Anchorage, and \$200,000 for Juneau School District. He noted

that the FY 2022 amounts are more urgent, as nearly all other states have already addressed their obligations, while the FY 2023 amounts will become due relatively soon.

[4:38:57 PM](#)

SENATOR STEVENS asked whether the reasons for noncompliance differed between FY 2022 and FY 2023.

[4:39:03 PM](#)

MR. BELL indicated that the reasons for noncompliance in FY 2023 are likely similar to those in FY 2022, primarily related to the step-down of the hold harmless provision. He explained that for most districts in FY 2023, the comparison is between FY 2022 and FY 2023 funding levels, while for high-poverty districts, the comparison is between FY 2019 and FY 2023. Although the calculation method is the same, using different base years results in varying amounts owed for FY 2023.

[4:39:41 PM](#)

SENATOR KIEHL asked for an estimate of how much more the state would have owed if the U.S. Department of Education had not allowed the exclusion of 15 poor rural school districts in year one and more than 20 school districts in year two from the compliance calculations.

[4:40:01 PM](#)

MR. BELL stated that he did not have the exact number available but offered to make a best guest estimate and provide it to the committee if needed.

CHAIR TOBIN expressed appreciation and requested he send the estimate to her office for distribution to the committee.

[4:40:16 PM](#)

SENATOR BJORKMAN noted that DEED recently stated that if the hold harmless provision were removed, the shortfall for maintenance of equity would be around \$400,000 to \$500,000. However, it was previously mentioned that the figure was closer to \$9 million. He asked if there was any information about the discrepancy between the calculations from legislative finance and the Department of Education's figures.

[4:41:09 PM](#)

MR. BELL clarified that other changes contributed to the shift from the initial \$9 million estimate to the current \$30 million estimate. These changes included adjustments to the calculation for high-poverty and high-need school districts, such as

changing the base year. Additionally, Juneau School District was no longer classified as a high-need or high-poverty district, leading to a significant reduction in the amounts owed. While the hold harmless provision was the main factor driving the increase, these recalculations also impacted the estimates by reducing the amounts in some areas.

[4:42:05 PM](#)

SENATOR BJORKMAN asked for the total dollar amount the state would need to disburse to school districts to achieve compliance if the hold harmless provision were excluded from the base year calculation.

[4:42:29 PM](#)

MR. BELL restated the question and said he did not have the exact amount available. However, he offered to provide a best guess estimate for the committee.

[4:42:55 PM](#)

SENATOR BJORKMAN asked whether he believed the state would succeed in its effort to remove the hold harmless provision from being considered as an additional funding amount in the base year calculation.

[4:43:21 PM](#)

MR. BELL stated that he could not directly comment on the likelihood of the state prevailing in its effort to remove the hold harmless provision. However, he noted that, according to the U.S. Department of Education, no other states have been granted an exemption, and all have included hold harmless funding in their calculations.

MR. REID said he could not speak to the question.

[4:43:51 PM](#)

CHAIR TOBIN informed committee members that they could submit written questions to the U.S. Department of Education, which will provide written responses that can be made public. She encouraged members to send questions to the office if answers could not be obtained from Mr. Reid or Mr. Bell. She mentioned that she had questions regarding proposed tolerance levels, noting that one state had chosen to eliminate all tolerance levels and increase funding for all districts to ensure equitable allocation. She emphasized that various options exist for achieving compliance, including the possibility of providing resources to every school district, not just selected ones.

4:44:50 PM

CHAIR TOBIN emphasized that Alaska remains the only state not in compliance with the maintenance of equity requirement and is facing unique stipulations from the federal government. She reaffirmed the committee's commitment to ensuring that every student in Alaska receives a quality education every day.

4:47:03 PM

There being no further business to come before the committee, Chair Tobin adjourned the Senate Education Standing Committee meeting at 4:47 p.m.