



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

May 17, 2024

The Honorable Kathy Hochul
Governor of New York
State Capitol Building
Albany, NY 12224

The Honorable Betty A. Rosa
Commissioner of Education
New York State Department of Education
89 Washington Avenue
Albany, NY 12234

Dear Governor Hochul and Commissioner Rosa:

I am writing in response to the New York State Division of the Budget's March 15, 2024, request to the U.S. Department of Education (Department) for a waiver of the fiscal year (FY) 2023 maintenance of effort (MOE) requirements under the American Rescue Plan Act of 2021 (ARP Act).

As a condition of receiving Elementary and Secondary Emergency Relief (ESSER) funds under the ARP Act, New York assured it would maintain effort, as defined in the ARP Act, for both elementary and secondary education and higher education in each of FYs 2022 and 2023. More specifically, for each FY, section 2004(a)(1) of the ARP Act requires a State that receives ARP ESSER funds to maintain State support for: 1) elementary and secondary education at least at the proportional level of the State's support for elementary and secondary education relative to the State's overall spending, averaged over FYs 2017, 2018, and 2019; and 2) higher education at least at the proportional level of the State's support for higher education relative to the State's overall spending, averaged over FYs 2017, 2018, and 2019. Section 2004(a)(2) of the ARP Act allows the Department to grant a waiver of the MOE requirements "for the purpose of relieving fiscal burdens incurred by States in preventing, preparing for, and responding to the coronavirus."

Under the authority of section 2004(a)(2) of the ARP Act, I am approving New York's request to waive the MOE requirements in section 2004(a)(1) of the ARP Act with respect to State support for elementary and secondary education to relieve fiscal burdens incurred by the State for FY 2023. This determination is based on the totality of the circumstances, including review of New York's waiver request and the fiscal burden the State incurred in responding to the COVID-19 pandemic; the Department's application of the statutory requirements; the Department's approach to MOE waiver requests as noted in the Frequently Asked Questions document;¹ and consideration of the impact on students.

¹ [8.15.22-Update_MOE-Chart-with-waiver-FAQs-Rounding-and-Appendices-Updated1.pdf](#)

Based on the information submitted, New York failed to meet the FY 2023 MOE requirement for elementary and secondary education by 0.86 percentage point (a \$441.5 million shortfall). New York noted that the decrease in proportional education spending was due to increases in overall State spending on health care and other programs related to the COVID-19 pandemic including rental assistance and supplemental unemployment insurance.

In determining whether to grant a State an MOE waiver, we may consider factors such as increased State support for education. New York submitted data showing it increased overall support for elementary and secondary education from an average of \$24,552,791,326 in the baseline years to \$29,313,943,039 in FY 2023. New York also increased FY 2023 per-pupil spending for elementary and secondary education by 31 percent, or \$2,955 per student, compared to the baseline. Finally, New York demonstrated a commitment to State support for elementary and secondary education beyond FY 2023 including \$3 billion in supplemental spending in FY 2024, as noted in the State's waiver request.² This supplemental appropriation is larger than the shortfall for FY 2023 as calculated under the ARP Act MOE requirement.

Thank you for your ongoing commitment to education. If you have any questions, please contact the State mailbox at: NewYork.OESE@ed.gov.

Sincerely,

Laura Jimenez

Laura Jimenez
Director, Office of State and Grantee Relations

² <https://oese.ed.gov/files/2024/04/New-York-USDE-Appendix-C-K-12-and-Higher-Ed-Waiver-Request-FY-2023-3.15.24.pdf>