



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

September 28, 2022

The Honorable Chris Sununu  
Governor  
107 North Main Street  
Concord, NH 03301-3860

The Honorable Frank Edelblut  
Commissioner of Education  
New Hampshire Department of Education  
101 Pleasant Street  
Concord, NH 03301-3860

Dear Governor Sununu and Commissioner Edelblut:

I am writing in response to the December 27, 2021, request from the New Hampshire Department of Education (NHDOE) to the U.S. Department of Education (Department) for a waiver of the maintenance of effort (MOE) requirements in section 317(a) of the Coronavirus Response and Relief Appropriations Act, 2021 (CRRSA Act) and section 2004(a)(1) of the American Rescue Plan Act of 2021 (ARP Act) with respect to elementary and secondary education. As a condition of receiving CRRSA and ARP pandemic relief funds under the Education Stabilization Fund, New Hampshire assured it would maintain effort for both elementary and secondary education and higher education in each of fiscal years (FYs) 2022 and 2023.

**This response provides a determination applicable to the CRRSA and ARP Acts' MOE requirements for FY 2022.**

For this fiscal year, under section 317(a) of the CRRSA Act, a State that receives Elementary and Secondary School Emergency Relief funds (ESSER II), Governor's Emergency Education Relief funds (GEER II), and funds for the Emergency Assistance to Non-Public Schools (EANS) program must: 1) Maintain State support for 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) Maintain State support for 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. This MOE requirement also applies to ARP ESSER funds. 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."

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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.*

Under the authority of section 2004(a)(2) of the ARP Act, I am approving New Hampshire’s MOE waiver request of the MOE requirements in section 317(a) of the CRRSA Act and 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 2022. As indicated in the Department’s Frequently Asked Questions [document](#), the Department’s approach to MOE waiver requests is rooted in consideration of the impact on students. In reviewing New Hampshire’s request for a waiver, the Department considered all information and data included in New Hampshire’s request and the totality of the circumstances. Based on the information submitted and the waiver considerations, the Department determined that, consistent with the Department’s interest in a State’s commitment to investing in education, New Hampshire demonstrated increased investments in elementary and secondary education. Specifically, New Hampshire increased State support for elementary and secondary education overall and on a per-pupil basis in FY 2022 compared to the baseline years. Additionally, per-pupil support for elementary and secondary education in FY 2022 increased at a rate that exceeded the growth in overall State expenditures.

Despite these facts, based on New Hampshire’s submission, the State failed to meet MOE requirements by approximately one percentage point in FY 2022, compared with the baseline years, which equates to roughly \$29 million. During FYs 2019 through 2023, New Hampshire experienced a marked enrollment decline that impacted the relative share of elementary and secondary education funding as a percentage of overall State spending. Absent this decline in elementary and secondary education enrollment, given the nature of the State’s education funding formula and its increased per-pupil funding over time, New Hampshire would have maintained effort.

Consequently, the Department determined that approval of the waiver, for purposes of FY 2022 requirements, is appropriate based upon consideration of the totality of the circumstances, including review of New Hampshire’s submission as well as the Department’s application of the statutory requirements and the Department’s approach to MOE waiver requests noted in the FAQ, including consideration of the impact on students. This waiver for FY 2022 MOE requirements is distinct from any determination the Department may make concerning New Hampshire’s compliance with Maintenance of Equity requirements for FY 2022 under the ARP Act (§ 2004(b)).

Finally, the Department believes it is premature to act on the State’s request for a waiver of the MOE requirements for FY 2023. We strongly encourage the State to take additional steps to further the State’s commitment to elementary and secondary education in FY 2023.

Thank you for your ongoing commitment to education. If you have any questions, please contact the New Hampshire State Mailbox at: [NewHampshire.OESE@ed.gov](mailto:NewHampshire.OESE@ed.gov).

Sincerely,

*Laura Jimenez*

Laura Jimenez  
Director, Office of State and Grantee Relations  
Office of Elementary and Secondary Education  
United States Department of Education