



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

June 12, 2023

The Honorable Kathy Hochul  
Governor of New York  
State Capitol  
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 Superintendent Rosa:

I am writing in response to the March 15, 2023, request from the New York State Division of the Budget 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). As a condition of receiving CRRSA Act and ARP Act pandemic relief funds under the Education Stabilization Fund, New York assured it would maintain effort for both elementary and secondary education and higher education in each of fiscal years (FYs) 2022 and 2023.

More specifically, for FY 2022, section 317(a) of the CRRSA Act requires 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 to: 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, and 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 317(a) of the CRRSA Act and section 2004(a)(1) of the

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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 York's request for a waiver, the Department considered all information and data included, as well as the totality of the circumstances. Based on the information submitted, the Department determined that, consistent with the Department's interest in a State's commitment to education spending, New York made increased investments in elementary and secondary education in FY 2022. Specifically, New York increased State support for elementary and secondary education overall and on a per-pupil basis in FY 2022 compared to the baseline years. Crucially, 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 York's submission, the State failed to meet MOE requirements by approximately 0.84 percent (\$369 million) in FY 2022, compared with the baseline years. The decrease in proportional education spending was driven by increased State spending on public health and non-recurring payments to two pandemic response programs in FY 2022, unemployment assistance for workers otherwise excluded from employments benefits, and COVID-19 testing kits for schools and local governments.

Considering the totality of the circumstances, including the State's ongoing commitment to support elementary and secondary education through a \$2.6 billion increase<sup>1</sup> in Foundation Aid in FY 2024 compared to FY 2023, as well as the State's demonstration of fiscal burdens incurred in responding to the coronavirus pandemic, the Department determined that approval of the waiver for purposes of the FY 2022 requirements is appropriate.

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

Sincerely,

*Laura Jimenez*

Laura Jimenez  
Director, Office of State and Grantee Relations

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<sup>1</sup> <https://www.governor.ny.gov/news/governor-hochul-announces-highlights-historic-fy-2024-new-york-state-budget>