



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

June 12, 2023

The Honorable Jim Justice  
Governor of West Virginia  
State Capitol  
1900 Kanawha Boulevard East  
Charleston, WV 25305

The Honorable David L. Roach  
State Superintendent of Schools  
West Virginia Department of Education  
1900 Kanawha Boulevard East  
Charleston, WV 25305

Dear Governor Justice and Superintendent Roach:

I am writing in response to the June 14, 2022, request from the West Virginia Department of Education (WVDOE) 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, West Virginia 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."

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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 West Virginia’s request to waive 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. Based on final FY 2022 data, West Virginia does not require a waiver for higher education because the State maintained effort for that budget area.

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 West Virginia’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, West Virginia failed to maintain effort in FY 2022 by \$23.7 million. West Virginia submitted data showing it decreased overall support for elementary and secondary education from an average of \$2,082,961,475 in the baseline years to \$2,049,783,217 in FY 2022 because of decreases in student enrollment of almost 15,000 students compared to pre-pandemic levels (FY 2019); these enrollment declines in turn influenced lower spending in school operations, maintenance, and transportation.<sup>1</sup> West Virginia also noted that the decrease in proportional education spending was driven by new, increased investments in the State’s health care system caused by the rise in COVID-19 cases due to the Delta variant. The pandemic also caused large increases in West Virginia’s Medicaid spending from March 2020 to March 2022, which is expected to cost the State over \$99 million.

West Virginia demonstrated a commitment to State support for elementary and secondary education in future fiscal years by increasing State aid for elementary and secondary education in the State FY 2024 budget (House Bill 2024), signed into law on March 16, 2023.<sup>2</sup> House Bill 2024 includes a \$40 million “School Building Authority” appropriation from the FY 2023 surplus for elementary and secondary school construction that is larger than the FY 2022 MOE gap. Consequently, considering the totality of the circumstances, the Department determined that approval of the waiver, for purposes of FY 2022 requirements, is appropriate because the State incurred fiscal burdens in responding to the coronavirus pandemic and has increased its State funding for elementary and secondary education in future fiscal years more than the amount of the MOE shortfall in FY 2022.

This waiver for FY 2022 MOE requirements is distinct from any determination the Department may make concerning West Virginia’s compliance with maintenance of equity requirements for FY 2022 under the ARP Act (§ 2004(b)). Based on data provided by the State, West Virginia has not yet complied with the maintenance of equity requirements in FY 2022 for six high-need LEAs. West Virginia must make supplemental payments to these high-need LEAs that experienced disproportionate per-pupil funding in FY 2022. Please advise the Department when these additional payments have been made.

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<sup>1</sup> These budget areas are based on expenditure data from the second preceding school year; for FY 2022, this was the 2019-20 school year, when transportation costs decreased because fewer school buses were in operation given COVID-19 stay-at-home orders.

<sup>2</sup> [https://www.wvlegislature.gov/Bill\\_Status/bills\\_history.cfm?INPUT=2024&year=2023&sessiontype=RS](https://www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=2024&year=2023&sessiontype=RS)

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

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

Sincerely,

*Laura Jimenez*

Laura Jimenez  
Director, Office of State and Grantee Relations